



24 October 2019

Senator James McGrath  
Chair of Education and Employment Legislation Committee  
Parliament House  
Canberra ACT 2600

Attention: Committee Members

Dear Senators

**Re: Casual mineworkers, questions raised in Senate Estimates hearings**

Senator Malcolm Roberts raised some important issues about the treatment of casual mineworkers during Senate Estimates hearings of the Education and Employment Legislation Committee, yesterday 23 October 2019.

While Senator Roberts is right to be outraged about the decline in permanent jobs and exploitation of casuals in coal mining, we would like to correct the record on a number of incorrect assertions made by the Senator.

Firstly, the push by mining companies to cut costs by replacing permanent employees with lower-paid casual labour hire workers is a disgrace and a cancer in our industry. Our Union has campaigned extensively on this issue, run numerous legal cases and provided numerous submissions to parliamentary inquiries outlining the problem. It is typical in Australian coal mines now for up to half or even more of employees to be casual labour hire, working alongside permanents on the same roster but for substantially less pay and worse conditions.

Unfortunately, this behaviour is not illegal under current workplace laws. This is why our Union has invested considerably in trying to change the law to better reflect community standards about the nature of casual work, particularly where it is not true 'casual' work, but more accurately highly insecure permanent work.

Our landmark win in the Federal Court in the matter of WorkPac v Skene has rewritten the law in this area, to assert that casual work is intermittent in nature and the 'permanent casual' model so prevalent in mining is unlawful. This decision is subject to further legal challenge and has been actively opposed by employer groups.

At the heart of Senator Roberts' questioning of officers from the Coal Long Service Leave Corporation and Safe Work Australia is the incorrect assertion that because the Black Coal Mining Industry Award does not recognise casual employment, it is therefore illegal for coal miners to be employed casually.

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In fact, coal miners may be employed under Enterprise Agreements that allow for casual work as long as they are approved by the Fair Work Commission. The Commission regularly approves EAs that include provisions for casual employment despite Union arguments it is detrimental to employees, accepting that a pay increase of as little as 1% over the Award is enough to leave them better off overall. These labour hire EAs leave people substantially worse off than permanent workers on union-negotiated site agreements with the mine operator. In the absence of 'same job, same pay' laws, this is deeply unfair but not illegal.

In this environment, our Union has taken an aggressive approach to challenging labour hire EAs. We have had considerable success in this area.

At the same time, we have sought to raise standards for labour hire workers by bargaining on behalf of our members for EAs with improved conditions including better rates of pay, casual conversion rights and industry-standard accident pay.

During Estimates hearings, Senator Roberts suggested the CFMEU's involvement with a range of industry bodies including Coal Long Service Leave and NSW Coal Services was somehow detrimental to workers' interests. This is complete rubbish. The Union uses its involvement in industry bodies to actively represent the interests of workers in the coal industry. No financial dividend from our partial ownership or involvement in any industry body, other than director fees where these are paid, flows back to the Union. Our involvement means we have retained one of the best long service leave schemes in the world for Australian coal miners - a national, portable scheme with 13 weeks' leave after eight years whether they are permanent or casual, regardless of changing employers or having a break from the industry. In NSW, our involvement in Coal Services over many decades means we have the best health monitoring and surveillance regime for coal workers in the world.

Addressing the push from mining companies to create second-tier, lower-paid workforces through casual labour hire remains a top priority for our Union. I welcome Senator Roberts' interest in this issue, but suggest he turn his attention to the mining companies like BHP who are driving this agenda; and the Morrison Government, which refuses to change workplace laws to prevent casual exploitation. I note One Nation's very poor record when it comes to supporting workers' interests in parliament.

If you have any questions arising from Senator Roberts' line of questioning or about the issue of casualisation in coal mining I would be very pleased to provide further detail.

Yours sincerely,

Tony Maher  
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*CFMEU Mining and Energy Division*