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Senate Education and Employment Committee
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Via email: eec.sen@aph.gov.au

My name is Stuart Bonds, I was the former One Nation candidate in 2019 when I campaigned against the Honourable Joel Fitzgibbon for the seat of Hunter.

I recently ran as an independent in the 2022 election against Dan Repacholi.

I have lived and worked in the Hunter Coal Mines for about 15 years. I'm a union member and I own a cattle farm just outside Singleton in NSW.
I am married and a father of two little girls.

Firstly would like to thank you all for conducting this committee and looking into the issue of equal work for equal pay.

It's hard to imagine another example of where Industrial Relations has gone more wrong than in the black coal mining industry.

As in all industries though, you can never really understand the industry until you've lived and breathed it.

Although looking from the outside in with fresh eyes can only be a good thing here.

As in all areas of life, you can never understand how you got to where you are, without looking back at where you've come from.

If we ever hope to sort this mess out, we need to understand how we got here so we don't make the same mistakes again.

Failure to do so would be like hiring the same building company to replace a bridge that just collapsed, with a new bridge.

Without doing any analysis on why it collapsed in the first place.

I've known about this issue of casual employment in the mining industry since 2006, which is about the time I started my mining career.

In 2006 there were very few labour hire firms operating in the Hunter.

The main firm I remember at the time was TESA, Total Employment Solutions Australia, which I will return to later.

The Coal Mining industry has had a complicated past between the Unions, employees and the mining companies.

The companies don't want to pay more for labour than they have to. (Who would)

The workers (me included) want to get as much money as we can for our labour.

The Union is there to make as much money on the side as they can doing deals for the workers and running the various schemes attached to the workers.

The Union and the minerals council run -

- Coal Mines Insurance
- Coal Services (miners medicals and chest x-rays)
- Coal Long Service Leave
- Auscoal (coal miners superannuation)

Until the last 2 decades and the explosion of labour hire, miners have enjoyed above average pay increases and their wages were exceptional.

The ability for companies to hold wages down was made near impossible because of the strong Union membership amongst full time employees and the inability for the companies to 'DIRECTLY' employ casual employees. This is because of the inability to continue production if there's a strike, this company between a rock and a hard place.

You will not find a casual employee working directly for a coal mining company in a production or engineering roll anywhere in Australia, yet there are tens of thousands of Coal Miners working in Australian Coal Mines in casual positions.

This is because there is no provision or pay guide for casual employees in the Black Coal Mining Award.

In fact it specifically says only staff positions (office positions) can be casual.

Therefore the mining companies cannot, and do not employ casual employees in production and engineering rolls.

So how did we end up with a class action, with 40,000 casual employees suing for 2 billion dollars in backpay in an industry that doesn't have a provision or a pay guide for casual employees in the award and where the companies running the mines don't have a single casual employee on their books?

Because the mining companies found a loophole.

Greed.

The roadblock to the companies directly employing casual employees on their books has always been the Union and the fact the Award has no provision for casual employment.

Considering any enterprise agreement must improve on the award, it's hard to convince anyone, let alone a bench of the FWC, that you are better off as a casual employee in a mining environment.

Plus the employees have always known that the mining companies would employ their entire workforce as casuals if they could.

What further prevents this happening was the threat of the Union taking legal action if the mining companies ever put casuals on their books and that resulted in strike action from employees.

The fact there's no pay guide in the award makes it almost impossible to do an effective boot test if someone contests the enterprise agreement because there's no pay guide to go off.

Several companies have hired casual employees without a union endorsed enterprise agreement and they were sued or threatened to be sued by the Union which resulted in bankruptcies. OneKey and Subzero to name a couple.

The one way you could avoid the whole mess is by allowing the Union to create a Labour hire firm and allow them to put casual employees into the mine themselves with their own enterprise agreements...Which is exactly what happened.

This is how United Miners Support Services was created, UMSS. With a noble goal of getting injured and retrenched miners back to work, however it evolved into something much different.

As they say, the road to hell is paved with good intentions.

There were some objections to the monopolistic nature of the UMSS business model brought before the old productivity commission.

But the Union argued that they would 'control the number of casual employees so it didn't get out of hand'.

To their credit, for many years they did control it and it appeared to work as intended.

Eventually in 2004 the inevitable happened.

UMSS was sold to a company called Total Employment Services Australia, TESA, for about 9 million dollars.

The Union proceeded to negotiate enterprise agreements on behalf TESA employees whilst they were a major shareholder of the company.

I think this itself is an embarrassment to the Union and an abuse of power but apparently it's not illegal.

This vastly expanded the amount of Labour Hire contracts in the industry and the number of mines using Labour Hire firms.

Interestingly, once the sale of UMSS occurred, Advent Private Capital 22%, The Northern Districts CFMEU 15.6% and Craig Ransley 6.9% become the largest shareholders of TESA.

The marriage didn't last long as TESA was then sold to Skilled for 61.9 million dollars in 2006.

<https://amp.theage.com.au/business/skilled-adds-tesa-seeks-catalyst-for-talent-pool-20060824-ge2zli.html>

Extract from AFR- ICAC shifts spotlight to Labor's 'Go To' guy – AFR March 18, 2013.

In 2004, Ransley bought the two CFMEU firms, which left the Northern District holding 15.6 per cent of TESA. The introduction of Work Choices in March 2006 made the business of providing cut-price labour even more lucrative. In August 2006, Ransley sold TESA to Skilled Group for \$62

million as part of a wave of takeovers of labour firms.

Ransley's share of the payout was \$5 million. The Northern District's payout would have been \$9.6 million, which apparently went to charities for distressed miners.

This is all shortly before Andrew Poole and Craig Ransley got wrapped up with Eddie Obeid, Ian McDonald and John Maitland in the Resco and the Doyles Creek fiasco that landed Obeid, Maitland and McDonald in gaol.

[Sydney Morning Heraldhttps://www.smh.com.au > nationalThird time unlucky for corrupt Macdonald - Sydney Morning Herald](https://www.smh.com.au > nationalThird time unlucky for corrupt Macdonald - Sydney Morning Herald)

The cost of the Resco circus to the state is estimated to be up to 100 million dollars.

[Sydney Morning Heraldwww.smh.com.au/lan Macdonald cost NSW up to \\$100m, trial told](http://www.smh.com.au/lan-Macdonald-cost-NSW-up-to-$100m-trial-told)

Another interesting side note is the General Manager of UMSS also made over 2 million dollars from the sale for his share of the company.

On its face it looks like it's about \$50,000.

But scratch the surface and you can see most of his shares were hidden in shelf companies that may have been designed to hide the identity of the true owner of the shares.

There are several other interesting names amongst these shelf companies.

These companies do not exist outside this venture.

Over the years since this disgraceful bunch of sales, casual employment exploded.

Today you'll find most mines sites have 30 - 50% of their workforce made up of labour hire workers in production and engineering roles.

Most of them on enterprise agreements. Around 85% of these agreements have a Union officials' signature on them.

You'll be told that casual employees make a small fraction of any mines overall workforce.

Which is may be true if you included absolutely everyone from the General Managers down.

But it's certainly not true for the people winning coal at the coal face.

It's also a fallacy that casual workers get paid 25% more than full time workers.

These labour hire employees are paid \$40,000-\$50,000 less than their co-workers with no leave entitlements.

No sick leave, no annual leave yet they must still apply to have unpaid leave like everyone else.

I was made further aware of the seriousness, and full extent of the issues surrounding casual employment in 2019 during the election.

Since 2019 I've witnessed, but not limited to:

- Fraudulent documents submitted to SafeWork NSW, SIRA and icare (formerly known as WorkCover NSW) and Coal Mines Insurance around workers injury claims.

- Fraudulent documents related to the industries workers were working in at the time of their injuries. The nature of their injuries suffered. The employee's income at the time of their injuries. Place, time date, circumstances. Everything about the claims has been incorrect, yet to this day, absolutely nothing has been done.

[Newcastle Herald Women injured while working as 'casuals' at a Hunter Valley mine ...](#)

[Newcastle Herald Malcolm Roberts raises major allegations against coal industry ...27 July 2020](#)

- Incorrect workers compensation insurer. Employees were insured by NSW icare rather than the statutory insurer Coal Mines Insurance.

<https://www.newcastleherald.com.au> > ...This week's lucky escape not the only big truck mishap at Mount Arthur

[Casual coal miners from NSW Hunter Valley join class action looking at BHP's use of labour hire companies26 June 2018](#)

- Accidents and injuries were not reported to the regulator.
- Chest x-ray reports have been written for x-rays that never happened. Chest X-rays that had occurred, but employees ended up with lung cancer a short time after the mandatory chest X-rays were conducted and the cancers were never picked up in the X-Rays. This indicated the chest X-Rays were never properly reviewed. Incidents of black lung have been suppressed.
(There's an ongoing investigation into these issues).
- Fraudulent documents relating to the accrual of long service leave hours by casual employees. Still waiting on a review from the Coal Long Service Leave Corporation to understand the extent of the practice.

www.afr.com Billion-dollar coal fund probed over industry fraud claims

<https://www.newcastleherald.com.au> > ...Coal Long Service Leave Corporation inquiry called by federal government ...

<https://www.singletonargus.com.au> > ...KPMG coal long service leave review reveals major problems, recommends ...

- Enterprise agreements being voted up by 3 workers that end up covering over 1700 employees.

<https://www.corrs.com.au> > insights Federal Court quashes enterprise agreement voted up by only three ...

- Blatant and rampant Phoenixing of labour hire firms.

<https://www.afr.com> > ... > Economy Mining union's labour hire deal with Fircroft under scrutiny - AFR

- Fraudulent documents relating to enterprise agreement applications submitted to the Fair Work Commission, designed at misleading the commission. I can provide documents if requested.
- Companies with no employees and no assets, just a current union endorsed enterprise agreements, sold for over \$300,000. The new enterprise agreement was used to re-employ 1100 employees, owed 3.5 million dollars. The agreement was purchased by the same company that owed the 3.5 million dollars to employees. The government ended up footing the bill for a large portion of the workers wages.

<https://www.afr.com> > ... > [EconomyMining labour hire firm Fircroft bought CFMEU enterprise agreement for \\$300k](#)

I could go on.

At its peak, the class actions potentially involved some 40,000 coal miners, mainly from NSW and Queensland...

What we have here are cases of sham contracts on a scale as big as the industry they are in.

A sham contract is described as an arrangement when - 'an employer attempts to disguise an employment relationship as a contractor relationship'.

They may do this to avoid certain taxes and their responsibility for employee entitlements like:

- minimum wages
- superannuation
- leave

It's illegal for an employer to:

- misrepresent an employment relationship as an independent contracting arrangement
- dismiss or threaten to dismiss an employee for the purpose of engaging them as a contractor
- say something false to persuade an employee to become a contractor

I would also add -

you know if you are under a sham contract if -

- Your employer could disappear off the face of the earth and your day to day job would not change.
- You are not being given the same workers compensation arrangements as your co-workers.
- Your wages are significantly lower for doing the same job, working the same hours at the same place of work as your workmates.
- You do not get any entitlements

These 'employers' are nothing more than a middleman taking a skim of the back of hard working Australians.

I would also argue a large problem with our stagnant wages is labour hire.

Right across the Australian economy, we have a scale of legalised wage theft and shame contract arrangements the likes of which the country has never seen.

This includes such arrangements right throughout the federal and state governments.

Billions of dollars of taxpayer's money is funnelled into labour hire firms from government institutions like -

- The Australian Taxation Office.
- Department of Defence.
- Department of Veterans affairs.
- Safe Work Australia.
- Service NSW.
-

These labour hire companies trade under several different business names.

This is a problem because when there's 8 companies applying for a tender, in reality there may be 2.

To add insult to injury most of these companies are foreign owned. Their shares are owned by names such as -

- Blackrock.
- Vanguard.
- JP Morgan and Chase.
- Citibank.
- The European Central Bank.
- The Japanese Central Bank.

I think the argument from employers - 'it's had to source staff on such a grand scale', falls to pieces when you consider some of the mining jobs, receive over 1000 applications per vacancy when advertised.

Apprentice intakes can be over 1500 applicants per available apprenticeship.

We've sacked entire government departments and had them train their labour hire replacements. I've met some of these people who trained their replacements.

So sourcing employees isn't the problem.

Things have got so bad some of the larger companies do not even attempt to employ directly anymore.

I point to BHP's NSW, Mount Arthur as a prime example. Around 2000 people on site and they didn't put on a single full time schedule B employee (Maintenance or production operator) for 6 years.

Then when they finally decide to put of employees, they attempted to so under a new Labour Hire company owned by BHP called Operational Services (OS).

Extract:

BHP's global operations were staffed by 80,121 people in fiscal 2020, with 30,589 of them – about 39 per cent – being employees and the rest contractors or labour hire.

Mr Henry indicated he wanted up to 80 per cent of his staff to be permanent employees in the near future.

"We currently have about 30 to 40 per cent of the workforce across BHP that are permanent employees, the rest being service contractors and labour hire. My ambition is for us to be able to double that in the coming years," he said.

[Australian Financial Review](https://www.afr.com)<https://www.afr.com> > ... > Mining [BHP wants to bring 30,000 workers in-house - AFR](#)

The Operational services agreement was eventually thrown out by the Fair Work Commission.

Extract:

The full bench agreed with several of the CFMEU's grounds of appeal including whether there was genuine agreement by workers and whether the agreements pass the 'better off overall test' compared with the Mining Industry Award and Black Coal Mining Industry Award.

me.cfmeu.org.au<https://me.cfmeu.org.au> > news > cf...[CFMEU wins appeal against BHP Operations Services dodgy agreements](#)

A side note here is this agreement was far better than any of the current Labour Hire agreements. Although they are nowhere near what employees get on the Enterprise Agreement at the mine, they had a far better rate of pay and the agreement included leave entitlements.

If this agreement doesn't meet the Better Off Overall Test compared with the award, how do any of the other dozens of Labour Hire agreements the Union officials have signed over the years?

So the question is, why would the company do this?

Why would a company outsource its labour to another company?

To cut costs.

When you consider the vast amount of resources companies are foreign owned and the labour hire companies are foreign owned, there's very little justification to continue this practice in the best interest of our country or its citizens.

I think it's time this practice was ended, and Australian workers were given a fair go.

Given the seriousness of some issues I've listed here, I'm hoping this committee is just the start of long needed reform.

I think this goes to the heart of what kind of a country do we want to leave for our children. We cannot have a truly equal society when we have people working side by side on such unequal footing.

Even Robo debt was set up and the programming was done by a labour hire firm.

If you think this is a fair business model, then I urge you to contact me so I can sign you up to my new company Poli-Hire.

Where I will pay you \$100,000 a year with no entitlements and keep the margin.

This is only meant as a joke. Unless people want to do it and then I'll quickly contact a labour hire employee at ASIC to set me up a company and we can go from there.

I'm happy to appear in person and I can bring a stack of documents to prove everything I'm saying here.

Thank you.

Stuart Bonds