INVESTOR ALERT • 8 FEBRUARY 2019

BHP is damaging shareholder value through poor Environmental, Social and Governance (ESG) performance

Headline issues

BHP's poor ESG performance must be a cause for serious investor concern and attention.

It has engaged in tax avoidance evidenced by its out of court settlement of an Australian Taxation Office underpayment dispute relating to its Singapore iron ore marketing hub, demonstrating poor governance (detailed in **Appendix 1**).

It failed to avoid major environmental damage, loss of life and community destruction in the Samarco mine disaster in Brazil, demonstrating poor environmental performance (detailed in **Appendix 1**).

And now, BHP has failed to comply with the intent of Australia's national shipping laws, creating a labour dispute demonstrating poor social responsibility. Australian maritime cabotage law and shipping registration law are both intended to retain and build employment for Australian national seafarers and help maintain a viable national shipping industry. BHP's attack on basic employee rights and workplace responsibility to ships' crew and the labour unions they freely associate with in terminating its vessel management and crewing arrangements for two of its iron ore vessels affecting the employment of Australian seafarers on its ships, presumably to be replaced by non-national seafarers in a domestic cabotage trade, compounds its poor human rights performance in its supply chains (details in **Appendix 2**).

BHP's cavalier approach means it has failed to uphold its human rights commitments as a signatory to the UN Global Compact and the UN Guiding Principles on Business and Human Rights.

BHP's decisions are likely to attract an adverse response from global and national labour unions, resulting in further investment risk, detrimental to the millions of superannuation and pension fund members who are invested in BHP.

It is time for investors to step up. BHP's hattrick of ESG failure is unacceptable. BHP is a global corporate citizen that needs to properly engage with stakeholders, particularly labour leaders, many of whom are investors as superannuation and pension fund trustees.

Sharan Burrow, General Secretary of the International Trade Union Confederation (ITUC), said at the recent Davos World Economic Forum that

> "*It is totally unacceptable for global businesses to exploit the workers of low wage countries by transporting them to high wage jurisdictions to take the jobs off local workers. This is not how a good global corporate employer behaves. For the trade union delegation in Davos, the case of BHP represents the crisis facing the global economy. BHP's use of insecure, low wage jobs will do nothing but fuel insecurity, fear and inequality. BHP's corporate influence over the Australian government, who issued visas for low wage workers to assist the sacking of Australian workers, demonstrates the risk to democracy when governments fail to protect their own citizens. Fear and insecurity are generating an age of anger.*"[1]

Steve Cotton, General Secretary of the International Transport Workers Federation (ITF) has reinforced the message that national maritime cabotage laws are the bedrock of the blue economy and decent work for seafarers. The blue economy is built on the link between sustainability, safety, job growth and labour rights. Liberalisation and abuse of cabotage is a major threat to the blue economy and international trade. Steve Cotton said that

> *"BHP's replacement of decent jobs with exploited workers exposes their corporate greed and the Australian government's failure to take responsibility for its own citizens".*[2]

Background to BHP's current dispute with maritime labour unions

In early January 2019, Australian maritime labour unions, including the Maritime Union of Australia (MUA), which represent the interests of seafarers and maritime workers in Australia, and are affiliates of the ITF, were informed by BHP that the last two remaining coastal trading bulk iron ore carriers in Australia, would be dumped immediately, presumably to be replaced by ships with non-national crew. The two ships, the *MV Mariloula* and *MV Lowlands Brilliance*, both crewed by skilled Australian seafarers, are supplied by BHP to service BlueScope's steelworks.

BHP, which spun off its steelworks to form BlueScope in 2002, has been providing shipping services to the Port Kembla steelworks for more than 100 years. The two vessels in question transport iron ore from BHP's mining operations in Port Hedland Western Australia to BlueScope's steelworks in Port Kembla, in NSW, then transport coal to China before returning to Port Hedland. The shipping operation is a national maritime cabotage trade.

The BHP decision has the potential to significantly affect Australian seafarers, resulting in the removal of Australian labour from BlueScope's steel industry supply chain, presumably to be replaced by highly exploited non-national seafarer labour. The decision will also impact on the viability of the Australian coastal shipping industry.

The maritime labour union and ITF issues

The key immediate issues concerning labour unions representing seafarers are:

- BHP's and BlueScope's lack of consultation and discussion with labour unions prior to the announcement by BHP, and the company failure to date to shed light on the reasons behind the decision.
- The immediacy of the decision when BHP's iron ore supply contract with BlueScope does not expire until June 2019.
- The closing down of a domestic (cabotage) shipping trade notwithstanding the intent of national shipping law that require shippers and shipping operators to, inter alia: (i) promote a viable shipping industry that contributes to the broader Australian economy; (ii) facilitate the long-term growth of the Australian shipping industry; and (iii) maximise the use of vessels registered in the Australian General Shipping Register in coastal trading (in a trade that has operated successfully for more than 100 years), when alternatives are available.
- The loss of Australian seafarer employment in a very difficult national seafarer labour market.

The maritime labour union and ITF request of BHP and BlueScope Steel

Seafarer labour unions are requesting that the companies:

- Meet with maritime and steel industry labour unions as well as the ITF and IndustriALL (the global union federation representing steel and mining workers) to ascertain the facts behind BHP's decision and to further discuss BHP's shipping arrangements between January and June 2019, and then beyond June 2019.
- Reverse the decision and retain the transportation of iron ore to BlueScope's Port Kembla steelworks in ships crewed by Australian seafarers.

Why the company's decision is a human rights abuse

In reaching the decision to withdraw ships employing Australian seafarers and in the manner which the decision has been made and communicated, BHP and BlueScope have failed to respect the human rights of Australian seafarers in their Australian bulk commodity supply chains, in the following ways:

- First, they failed to adequately consult with either the workforce nor their labour unions on the employment and economic security impacts of the operational decision to withdraw two Australian crewed iron ore carriers from coastal trading, presumably to be replaced by ships with non-national crew.
- Second, they have failed to respect the rights of Australian seafarers to work and ply their skills in their own country despite this iron ore trade being an entirely Australian business operation conducted within Australia and subject to Australian cabotage laws (principally the *Coastal Trading (Revitalising Australian Shipping) Act 2012*).

In addition, BHP has failed to engage with the International Transport Workers Federation (ITF) and national seafarer unions on appropriate labour standards relating to crewing, training and safety for seafarers on FOC ships chartered on the spot market for their international bulk commodity and product trade. Nor has BHP consulted labour unions about its intentions regarding the foreign flagged and crewed ships presumably to replace Australian crewed ships in its Australian iron ore supply chain.

BHP has also failed to respect the human rights of its workforce in its mining operations as outlined in **Appendix 2**.

How BHP has failed to comply with Australian shipping laws

National maritime cabotage law

BHP has not acted in accordance with the spirit and intent of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act). The key provisions in the object of the CT Act[3] are to:

- Promote a viable shipping industry that contributes to the broader Australian economy; and
- Facilitate the long-term growth of the Australian shipping industry; and
- Enhance the efficiency and reliability of Australian shipping as part of the national transport system; and
- Maximise the use of vessels registered in the Australian General Shipping Register in coastal trading; and
- Promote competition in coastal trading.

BHP's actions in announcing the withdrawal of two iron ore carriers from Australian coastal trading is entirely contrary to the

object of the CT Act in that it:

- Helps destroy the viability of the shipping industry in Australia, and removes the contribution of these ships to the Australian economy in terms of employment, tax revenue, small and large businesses that support these ships regarding provisioning, bunkering, crewing, technical management etc;
- Undermines the long-term growth of the Australian shipping industry;
- Severely diminishes the efficiency and reliability of Australian shipping as part of the national transport system, by increasing Australia's reliance on foreign shipping contrary to the national interest and contrary to enhancement of national security;
- Further reduces the use of vessels registered in the Australian General Shipping Register in coastal trading; and
- Reduces competition in coastal trading by undermining the capacity of Australian crewed ships to compete in coastal trading.

National ship registration law

BHP has not acted to support the object of the International Shipping Register provisions in the Australian *Shipping Registration Act 1981*[4], which are to:

- Facilitate Australian participation in international trade; and
- Provide an internationally competitive register to facilitate the long-term growth of the Australian shipping industry; and
- Promote the enhancement and viability of the Australian maritime skills base and the Australian shipping industry.

Notwithstanding that BHP is one of the largest exporters of bulk commodities from Australia, chartering hundreds of ships annually, it has failed in the nearly 7 years since the International Register was established in 2012 to register even one ship on the Australian International Register. Registration on the Australian International Ship Register requires that just two senior members of the crew (usually comprising some 22 to 28 crew members in total) to be Australian nationals and that the crew be covered by a collective agreement made between the owner of the ship and the seafarers' bargaining unit.[5]

The International Register is supported by a package of tax incentives provided in the *Shipping Reform (Tax incentives) Act 2012* including:

- Accelerated depreciation and rollover relief for owners of eligible Australian registered vessels;
- An income tax exemption for Australian operators of eligible Australian registered ships on qualifying shipping income;
- A refundable tax offset for employers who employ eligible Australian seafarers; and
- An exemption from royalty withholding tax for foreign owners of eligible ships leased under a bareboat or demise charter to an Australian operator.

BHP has failed to take advantage of these tax incentives to increase Australian content (employment of Australian national seafarers) in its international shipping from Australia.

BHP's Environmental, Social and Governance (ESG) commitments

BHP is a signatory to the United Nations Global Compact which obliges it to comply with the UN Guiding Principles on Business and Human Rights requiring corporations to identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. BHP also claims that that it is contributing to attainment of the United Nations Sustainable Development Goals (SDGs) through, inter alia, the direct and indirect employment opportunities it creates, and through its supply chain[6].

BHP states that it expects its contractors in its supply chains to also respect human rights. It claims to require its suppliers to meet the following specific standards[7]:

Laws and regulations:

- The supplier must comply with the letter and, where it is clear, the intent of all laws and regulations relating to their business conduct. This includes understanding laws and regulations relevant to their work and complying with legal requirements of the country where they are working.

Treatment of employees:

- The supplier must create and maintain an environment that treats all employees with dignity and respect and must not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse.

Freedom of association:

- The supplier must: adopt an open attitude towards the legitimate activities of trade (labour) unions; allow their workers' representatives to carry out their legitimate representative functions in the workplace and not be discriminated against.

What are the facts about BHP Billiton's actual ESG performance?

BHP's stated ESG commitments are not matched by its practice. In summary, BHP:

- Has failed to respect human rights;
- Has failed to respect and uphold the intent of Australian laws;
- Has failed to put safety first;
- Remains a large polluter impacting on climate change and the environment;
- Has not established mutually beneficial relationships with at least one key stakeholder – labour unions; and
- Has not met its own sustainability targets on key measures.

Overall, BHP has not therefore not complied with its obligations as a signatory to the UN Global Compact.

This poor ESG performance is detailed in Appendix 1.

What are the risks that BHP faces arising from its poor ESG performance?

BHP faces a number of material risks that could impact on the company's future valuation, including:

- **Reputational risk**. As one of the largest global mining companies and as one of the world's oldest and largest corporations that places a high value of its corporate behaviour in many markets, it is particularly vulnerable to reputational risk.
- **Financial risk**. Unilateral decisions taken by BHP aimed at making small savings in its Australian domestic shipping operations could prove counterproductive and have implications for its entire global shipping operations which are central to BHP's financial performance as a major shipper of bulk commodities. The loss of skilled labour can present a material risk as demonstrated by the nearly $600M loss BHP suffered from an iron ore train derailment in 2018[8]. The response of labour unions to BHP's Australian shipping operations combined with the shipping policies of a future Australian Labor Government, which will expect a major Australian corporation like BHP to support, could have significant logistics cost implications for BHP.[9] It could be expected that the ITF and supply chain unions, particularly mining and maritime unions, will place BHP's worldwide shipping operations under much closer scrutiny in the period ahead.
- **Legal risk**. BHP is facing at least two class actions which could materially impact on BHP's value. These include: (i) The Federal Court of Australia action filed by the Los Angeles County Employees Retirement Association for recovery of losses suffered by its members who are the owners of the pension fund's shares in BHP arising from BHP's actions relating to disclosure regarding the Brazilian mine disaster; and (ii) A class action by 400 plus BHP workers who allege they were left Aus$40-50 million worse off because they were hired as "casual" employees and were not paid entitlements that have now been found in a separate Federal Court judgment to be entitlements to which they are due. BHP is also is dispute with the government of Western Australian over payment of Royalties.[10]

The impact of BHP's poor ESG performance on the company's value

While it is difficult to accurately predict the impact of the realisation of material risks on BHP's valuation, the impact of the Brazilian mine disaster in 2015 provides valuable insights as to the potential impact. From 6 November 2015 (the tailings dam collapse was on 5 November 2015) to 21 January 2016 (its recent valuation low point) BHP shares on the ASX fell from Aus$22.70 to Aus$13.60, a fall of 40.1% in less than 3 months. It took 12 months to recover its pre-mine disaster share price.

Actions which investors and investor organisations can take to encourage BHP to improve its ESG performance

Trustees on superannuation and pension funds

- Trustees on superannuation and pension funds invested in BHP and BlueScope could raise as a matter of priority with their CEO and or CFO their concerns about BHP's ESG performance. In particular, trustees could raise concerns about the risks associated with BHP's and BlueScope's decision to withdraw two Australian crewed iron ore carriers from coastal trade servicing its contract to supply BlueScope with iron ore for its steel production at Port Kembla, drawing attention to the material risks potentially facing these companies due to the decision, and seeking a reversal of the decision, pending negotiations with labour unions.

Pension funds and investor organisations

- Superannuation and pension funds, and investor organisations, including asset managers holding BHP and BlueScope stock, could make representations to these companies to raise concerns about BHP's failure to conform with its obligations as a signatory to the United Nations Global Compact, requiring in turn conformance with the UN Guiding Principles on Business and Human Rights. Pension funds and investor organisations could seek commitments from BHP seeking a reversal of its decision to withdraw two Australian crewed iron ore carriers from coastal trade servicing its contract to supply BlueScope with iron ore for its steel production at Port Kembla, pending negotiations with labour unions, given the material risks potentially facing BHP arising from its decision.

APPENDIX 1

Details of BHP's poor ESG performance

Failure to comply with Australian taxation law - Tax avoidance through transfer pricing – Australia/Singapore

BHP's out of Court settlement of an Australian Taxation Office (ATO) claim for unpaid tax is, notwithstanding BHP's non-admission, a clear case of attempted tax avoidance from its tax obligations under Australian tax law.

On 19 November 2018 BHP agreed to pay Aus$390 million to the ATO to help settle dispute over its Singapore marketing hub. As part of the settlement, BHP will pay a total of about Aus$529 million (US$386.43 million) in additional taxes on income for the period 2003 to 2018.

The dispute involved the amount of Australian tax payable from sales of BHP's Australian commodities to its Singapore marketing business.

Simultaneously, BHP announced it will raise its stake in BHP Billiton Marketing AG, which is the main company conducting its Singapore marketing business, to 100 percent from 58 percent. The change in ownership will make all profits made in Singapore from Australian assets owned by BHP fully subject to Australian tax.

Notwithstanding the above-mentioned settlement, BHP remains in dispute with the ATO regarding whether profits earned globally by the group's marketing organisation from the on-sale of commodities acquired from Australian subsidiaries of BHP Billiton are subject to 'top-up tax' in Australia under the Controlled Foreign Companies rules".[11]

BHP has failed to avoid environmental damage, loss of life and community destruction – the Samarco mine disaster in Brazil

On 5 November 2015, the Samarco Mineração S.A. (Samarco) iron ore operation in Minas Gerais, Brazil, experienced a tailings dam failure that resulted in a release of mine tailings, flooding the communities of Bento Rodrigues, Gesteira and Paracatu and impacting other communities downstream. Nineteen workers were killed.

The dam failure and subsequent flooding has led to contamination of downstream river systems from the local area across western Brazil to the Atlantic Ocean. It has also impacted on the water supplies for around 200 villages and towns along the Doce Rio river system.

On 25 November 2015, the Office of the UN Commissioner for Human Rights announced the detection of heavy toxic metals, including elevated levels of arsenic, barium and manganese in the mud flow arising from the dam collapse.

The current version of the Global Reporting Standards (GRI) which BHP have adopted requires companies to report where they have "impact", which would include Samarco and minority investments, but it is not yet clear that BHP is complying with the GRI reporting standards.

On 2 March 2016, BHP Billiton Brazil, together with Samarco and Vale (its joint venture partner in the Samarco mine), entered into a Framework Agreement with the Federal Government of Brazil, the states of Espírito Santo and Minas Gerais and certain other public authorities to establish a foundation (Fundação Renova) that will develop and execute environmental and socio-economic programs (Programs) to remediate and provide compensation for damage caused by the Samarco dam failure. A committee (Interfederative Committee) comprising representatives from the Brazilian Federal and State Governments, local municipalities, environmental agencies, impacted communities and Public Defence Office oversees the activities of the Fundação Renova in order to monitor, guide and assess the progress of actions agreed in the Framework Agreement.

The term of the Framework Agreement is 15 years, renewable for periods of one year successively until all obligations under the Framework Agreement have been performed. Under the Framework Agreement, Samarco is responsible for funding Fundação Renova's annual calendar year budget for the duration of the Framework Agreement. The funding amounts for each calendar year will be dependent on the remediation and compensation projects to be undertaken in a particular year. Annual contributions may be reviewed under the Framework Agreement. To the extent that Samarco does not meet its funding obligations under the Framework Agreement, each of Vale and BHP Billiton Brazil has funding obligations under the Framework Agreement in proportion to its 50 per cent shareholding in Samarco.

On 29 June 2018, BHP Billiton Brazil announced funding of US$158 million to support Fundação Renova for the six months to 31 December 2018, in the event Samarco does not meet its funding obligations under the Framework Agreement. Any support to Fundação Renova provided by BHP Billiton Brazil will be offset against the provision for the Samarco dam failure.

In the 2018 financial year BHP reported an exceptional loss of US$650M (after tax) in relation to the Samarco dam failure.

Class action arising from its Samarco mine dam collapse in Brazil

On 24 September 2018 the Los Angeles County Employees Retirement Association (a pension fund with assets of US$52B) lodged a claim in the Federal Court of Australia for recovery of losses suffered by its members who are the owners of the pension fund's shares in BHP arising from BHP's alleged failure:

- To take or cause to be taken all reasonable and proper precautions for the safe conduct of the Samarco mine, and in particular for the safety of workers, nearby communities and the environment;
- To disclose information to the 3 stock exchanges on which its shares are listed (Australia, UK and Sth Africa) about the known risks relating to the mine dam which was material to an assessment of the likely future financial performance of the company; and
- To comply with the company's own safety policy relating to its employees and the communities in the vicinity of its mine.[12]

The company's wealth is likely to continue to suffer for some years yet as a result of its failings in relation to environmental protection and mine safety.

BHP has failed to put safety first – it continues to kill and injure its workers

BHP has an appalling fatalities record. From 2008 to 2018, 39 BHP workers or contractors lost their lives while working on BHP sites. Fatality data, drawn from BHP's Annual Reports, is shown in Table 1 below.

Table 1: BHP Billiton's fatality record in its operated assets 2008 to 2018

Financial year	Fatalities
2008	11
2009	7
2010	5
2011	2
2012	3
2013	3
2014	0
2015*	5
2016	0
2017	1
2018	2
Total	**39**
Total if Brazilian fatalities are included	**58**

Source: Drawn from BHP Annual Report 2017 P48 and BHP Annual Report 2018 P44

*This does not include the 19 workers who died as a result of the Brazilian tailings dam collapse.

In 2018 the company reported that its total recordable injury frequency (TRIF) increased by 5% from 2016/17 – BHP target not met. In 2017 BHP reported that total recordable injury frequency (TRIF) performance at its operated assets in FY2017 was 4.2 per million hours worked, representing an improvement of 9% over five years – BHP target met. In 2016 the company reported that its TRIF performance in FY2016 was 4.3 per million hours worked, a slight increase on FY2015 – BHP target not met. In 2015 the company reported that its TRIF has improved by two per cent over the year = BHP target met. In 2014 the company reported that it improved its TRIF by nine per cent – BHP target met.

Notwithstanding some small improvements in its TRIF in some years over the past 5 years, there remain setbacks and the overall trend is poor. The net result is that BHP continues to injure too many workers and contractors far too frequently.

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BHP remains a large polluter – and its greenhouse emissions rose in 2018

BHP recognises that the potential physical impacts and related responses to climate change may impact the value of BHP, its assets and markets.[13]

Notwithstanding that acknowledgement, BHP reported in 2018 a 1% increase in operational greenhouse gas emissions from FY2017, a deterioration on its greenhouse emissions reductions reported previously over the period 2015 to 2017.[14]

BHP has not established mutually beneficial relationships with at least one key stakeholder – labour unions

BHP has embarked on a labour relations and employment strategy aimed at minimising the influence and representative capabilities of the miners' labour union, the CFMMEU, contrary to the historical position of the CFMMEU (and its predecessors) to maintain constructive relationships with the company. This approach cannot be regarded as mutually beneficial. BHP's approach is demonstrated in the CFMMEU submission to an Australian Parliamentary Inquiry into how the mining sector can support business in regional communities: the impact of labour hire on regional communities.[15] Conclusions that can be drawn from the CFMMEU submission are that:

- BHP has been one of the industry's most voracious users of the Fly-In, Fly-Out (FIFO) employment practice contrary to the position of the CFMMEU. For example, at its the new Caval Ridge and Daunia coal mines located near the town of Moranbah in Qld it sought to require 100% of the workforce to be FIFO workers. The 100% FIFO requirement meant that local people could not apply for jobs at these mines, even though the local towns of Moranbah and Blackwater can supply plentiful quantities of skilled mining labour. The lobbying of the CFMMEU and local community representatives ultimately resulted in the Queensland Government introducing restrictions on100% FIFO operations via the *Strong and Sustainable Resource Communities Act 2017* (Qld).
- BHP has also been central to the explosion in the use of labour hire workers by the big mining companies, again contrary to the position of the CFMMEU. The company preference for labour hire instead of direct employment, leads to a number of detrimental impacts including:
  - Labour hire operators overwhelmingly characterise their employees as "casuals" and therefore, the employees have no entitlement to annual leave, sick leave or redundancy pay. These employees can also be stood down without pay during periods of inclement weather, during operational delays, or machinery breakdown.
  - Casuals labour hire employees have difficulty obtaining credit because they have no ongoing job security.
  - Casual labour hire workers are on average paid 30% less than permanent workers, even taking into account the casual loading, and after factoring in that casuals are not paid for any holidays taken (while permanents typically receive 4-6 weeks holidays), again contrary to the labour standards established by the CFMMEU in collective agreements for the permanent directly employed workforce.

The Parliamentary Inquiry recommendations support the CFMMEU position.[16]

BHP's cavalier approach in advising the MUA through an email from a middle ranking executive during the Christmas/ New Year holiday season about its decision to terminate its vessel management and crewing arrangements affecting the employment of some 40 Australian seafarers with long periods of dedicated service on its iron ore ships also demonstrates that BHP has failed to establish a mutually beneficial relationship with labour unions.

BHP has not met its own sustainability targets on key measures

In 2018, BHP did not meet its own sustainability targets in relation to the following measures:

People

- **Target:** Zero work-related fatalities – there were 2 fatalities in 2018.
- **Target:** Year-on-year improvement of our total recordable injury frequency (TRIF) per million hours worked – its TRIF increased by 5% in 2018 compared to 2017.
- **Target:** 50 per cent reduction in the number of workers potentially exposed to DPM, silica and coal mine dust as compared to BHP's FY2017 baseline by FY2022 – BHP's performance on this measure is not known but (i) it declined to answer questions for a media investigative report following the death of a worker from silicosis its Goonyella Riverside open cut coal mine in Qld Australia, about how many other current and former workers at the Goonyella mine have been diagnosed with silicosis or other silica and coal dust-related conditions[17]; and (ii) the BHP Billiton Mitsubishi Alliance's Peak Downs coal mine in Queensland was found in 2017 to be the biggest generator of airborne pollution in the nation, according to the National Pollution Inventory.[18]

Climate change

- **Target:** By FY2022, maintain greenhouse gas (GHG) emissions at or below FY2017 levels – BHP's greenhouse gas emissions rose in 2018.

APPENDIX 2

Additional BHP human rights abuses

BHP has also sought to avoid its obligations as an employer in its mining operations through the excessive use of contractors (55-65% of the workforce on its own managed sites, compared to the industry average of 30-40%).

BHP has also been an excessive user of casual employees, prompting a Canberra-based law firm Adero Law, backed by British litigation funder August Ventures, to launch a class action against BHP and labour hire firm Chandler McLeod over their use of casuals.[19] The class action involves up to 400 workers who allege they were left Aus$40 million worse off because they were hired as "casual" workers by labour hire firms to work on BHP mine sites and not as permanent staff, despite their rosters being published months in advance. The class action could grow to include between 800 and 1,500 workers, who are likely to claim in excess $50 million in compensation.[20]

BHP also strongly contested a Construction Forestry Mining & Energy Union (CFMEU) application to the Australian Federal Court whose full bench has held that casual mine workers should be paid out accrued annual leave in circumstances where they work regular, predictable hours, notwithstanding such workers receive extra loadings in lieu of those entitlements.[21]

ENDNOTES

1 ITUC Press Release, ITUC joins opposition to BHP's decision to end 100 years of Australian shipping, 25 January 2019
2 Ibid
3 Commonwealth of *Australia, Coastal Trading (Revitalising Australian Shipping) Act 2012*, Section 3, P2 https://www.legislation.gov.au/Details/C2012A00055/Download
4 Commonwealth of Australia, Shipping Registration Act 1981, S15, P16 https://www.legislation.gov.au/Details/C2013C00349/Download
5 The Shipping Registration Act 1981 defines the seafarers' bargaining unit (SBU) for a ship as a body consisting of a representative from each employee organisation that: (a) has, as a member, one or more seafarers who will work on the ship when it is used to engage in international trading; and (b) is entitled to represent the industrial interests of those seafarers in relation to that work; and (c) has given written notice to the owner of the ship that it wishes to be a member of the body and has not withdrawn that notice.
6 BHP Sustainability Report 2018 P10 https://www.bhp.com/-/media/documents/investors/annual-reports/2018/BHP'sustainabilityreport2018.pdfP10
7 BHP website, Respecting human rights and UK Modern Slavery Act Statement, https://www.bhp.com/our-approach/operating-with-integrity/respecting-human-rights
8 *Mining.com, Runaway train wreck, copper outages cost BHP $600 million* http://www.mining.com/runaway-train-wreck-copper-outages-cost-bhp-600-million/
9 It should be noted that in mid 2015 following the Brazilian mine disaster, Robeco (an international asset manager) commenced a pilot engagement with Vale, BHP's joint venture partner. Robeco focused on the ultimate financial impact of the ESG risks faced by Vale by mapping the company's operations per commodity, region, and profitability and production levels. The exercise identified the most financially material ESG risks in Vale, which were: corporate governance and the relationship with the Brazilian government, social license to operate, joint venture control issues, and bribery and corruption. Similar issues may be found in BHP.
10 ABC News, 21 January 2019, BHP allegedly underpaid up to $300 million in iron ore royalties to WA Government, https://www.abc.net.au/news/2019-01-21/bhp-allegedly-underpaid-millions-in-wa-iron-ore-royalties/10731830
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12 Federal Court of Australia, Victorian Registry, Statement of Claim, Los Angeles County Employees Retirement Association V BHP, 24 September 2018
13 BHP Annual Report 2018 P35 https://www.bhp.com/-/media/documents/investors/annual-reports/2018/bhpannualreport2018.pdf?la=en
14 Ibid P8. See also BHP Annual Report 2017 P6
15 CFMMEU submission to the House of Representatives Standing Committee for Industry, Innovation, Science and Resources Inquiry into how the Mining Sector can support business in regional communities: the impact of labour hire on regional communities. https://www.aph.gov.au/Parliamentary_Business/Committees/House/Industry_Innovation_Science_and_Resources/MiningSector/Submissions
16 See in particular Recommendation 19. Keep it in the regions Mining and resources industry support for businesses in regional economies House of Representatives Standing Committee on Industry, Innovation, Science and Resources Report, November 2018 https://www.aph.gov.au/Parliamentary_Business/Committees/House/Industry_Innovation_Science_and_Resources/MiningSector
17 ABC web News, 8 June 2018 Coal miner's death after silicosis diagnosis a warning on dangerous dust levels https://www.abc.net.au/news/2018-06-07/silicosis-death-signals-warning-on-dangerous-dust-levels/9841584
18 Mining Monthly 19 April 2017, https://www.miningmonthly.com/sustainability/international-coal-news/1308426/bma-worst-dust-offender-study
19 AFR 13 September 2018 Employers facing '$8b back pay bill' for casuals after 'double dip' ruling https://www.afr.com/news/policy/industrial-relations/employers-facing-8b-back-pay-bill-for-casuals-after-double-dip-ruling-20180912-h15a1x
20 SMH, 24 June 2018,'Ground-breaking' class action launched over casuals in mining https://www.smh.com.au/business/companies/ground-breaking-class-action-launched-over-casuals-in-mining-20180622-p4zn89.html
21 Full Federal Court of Australia WorkPac Pty Limited v Skene [2018] FCAFC 131 (WorkPac v Skene) 16 August 2018 http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2018/2018fcafc0131