

Pauline Hanson's One Nation

COAL MINERS WAGE THEFT

An independently commissioned analysis demonstrating over \$30,000 a year in wages are stolen from casual mineworkers by labour hire companies with the endorsement of the Mining and Energy Union and the Fair Work Commission.

6 February 2024

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PART ONE
COAL WAGE ANALYSIS

1. OVERVIEW

1.1. Introduction

This is a report detailing the results of research which finds that large numbers of coal miners working through labour hire businesses in Central Queensland and the New South Wales Hunter region have been and are being paid substantially less than should be required under the Black Coal Industry Award. The evidence is that these coal workers are the victims of major wage theft across the industry.

The research assesses that the wage theft averages up to **\$32,745.00** a year per miner in 2023. Thousands of workers have been affected.

In assessing the underpayment, the research has applied what is called the Better Off Overall Test (BOOT). This test is the standard test required under the *Fair Work Act*. Before an enterprise agreement can be endorsed/approved by the Fair Work Commission, the Commission is required under the Act to be satisfied that an enterprise agreement leaves workers 'better off overall' than under the relevant comparative award.

This research finds that, across a range of labour hire enterprise agreements applying in the coal mining sector that have been endorsed/approved by the Fair Work Commission, the affected workers have and are being paid substantially less than they should be required under the Black Coal Industry Award (the relevant comparative award) where a 25% casual loading should apply. That is, the enterprise agreements fail the BOOT.

1.2. How This Assessment Was Done

How work is organised in the black coal sector and how award pay rates apply to that work has a comparative uniqueness. Coal mines operate 24 hours a day, 7 days a week, 365 days a year. To accommodate this:

- A 35-hour work week is not standard.
- Rather, the standard is for coal workers to work seven 12.5-hour rotating shifts a fortnight anytime, any day within the 7-day (Monday to Sunday) week throughout the 365-day year.

The result is that, under the rosters:

- Workers' average work week is 43.75 hours worked any day, any time, Monday to Sunday.

Another uniqueness is that very large numbers of coal miners work through specialist labour hire companies where they are employed as casuals.

Important Note: A further standard is that the enterprise agreements convert all pay to an 'all in' flat hourly rate. That is, whatever hours a worker works, the worker is paid a standard flat hourly rate. However calculated, that enterprise agreement flat rate amount should see a worker earning higher income than they would receive if working under the award. If the income were lower, the enterprise agreement would fail the BOOT.

The task in this assessment then, was to compare what a casual employee should earn under the award with what casual employees of labour hire companies are earning under their respective labour hire enterprise agreements. To do this several steps were/are required.

Step 1: Understand how standard work rosters apply in the coal mines.

AWARD

Step 2: Apply those rosters to the Black Coal Industry Award.

Step 3: Assess what a full-time employee would/should earn under the award over a full year.

Step 4: Convert a full-time employee income into what a casual would/should earn over a year under the award. Then convert that full year's income into what an award casual employee should earn as a flat hourly \$ rate.

ENTERPRISE AGREEMENTS

Step 5: Study relevant labour hire enterprise agreements and what casual pay rates apply. Identify the flat \$ hourly rates being paid under the enterprise agreements.

Step 6: Compare the award-required casual pay to the enterprise agreement/s casual pay.

This part of the report seeks to deal just with the facts. Commentary on the facts is contained in the second part of the report.

1.3. Summary: Overview of Findings

Under the standard work roster described above, across a full 365-day year there are potentially/theoretically 2,287 hours that any worker can work. (This assumes a worker does not take any holidays.) Applying this potential/theoretical hours worked figure, a yearly full-income potential for a casual worker is:

- Under the award + loading, a minimum of \$151,605
- Under the enterprise agreements an average of \$118,315

Applying the steps above it was found that the casual flat hourly rates for 2023 are as follows:

- Award minimum required \$66.40
- Enterprise agreements average \$51.73

1.3.1. Comment on BOOT

The casual flat rate minimum award rate of \$66.40 / hr is a real figure against which any BOOT should be conducted. This should be an easy exercise.

Based on these straightforward facts, the clear conclusion is that the labour hire enterprise agreements are paying casual workers less than they are legally required to be paid under the award. Consequently, the enterprise agreements fail the BOOT and should not have been approved/endorsed by the Fair Work Commission.

Under any normal understanding of the term, this amounts to wage theft. The potential (average) wage theft from a worker in a full year is potentially up to \$33,745.

(NB: The second part of this report discusses how this underpayment has been created and 'justified' by the parties involved.)

The following sections of this report detail how the foregoing calculations were made.

2. THE RESEARCH STEPS

2.1. Step 1: Understand How Standard Work Rosters Apply in The Coal Mines

As stated above, how work is organised in the black coal sector and how award pay rates apply to that work has a comparative uniqueness. Coal mines operate 24 hours a day, 7 days a week, 365 days a year.

To accommodate this, the standard is for coal workers to work seven 12.5-hour rotating shifts a fortnight anytime, any day within the 7-day (Monday to Sunday) week throughout the 365-day year. The standard rostered working fortnight is 87.5 hours a fortnight (43.75 hours a week).

That is, in any given fortnight, workers will work combinations of days, evening and night shifts any day Monday to Sunday. The pattern of what shifts are worked, and when, will vary depending on how rosters marry up with weeks during the full year.

Across a full calendar year, a mine worker can potentially work up to 2,287 hours.

(NB: Understandably few if any workers would work those 2,287 hours. However, for the purposes of calculating the minimum award pay rate, the 2,287 hours has been taken as a basis for calculations.)

2.2. Step 2: Apply Those Rosters to the Black Coal Industry Award

To enable the calculation an Excel spreadsheet has been created which shows:

- Every day of the year.
- Inserts the standard eight 12-hour rotating shift across the full year.
- This then identifies each day worked Monday to Sunday.
- And identifies 'ordinary' and shift (evening/night) hours worked each day.

The spreadsheet is at ***Appendix 1***.

2.3. Step 3: Assess Full-Time Employee Wage Under Award

In the spreadsheet (Appendix 1) the appropriate pay rate formulas were inserted into each cell. These required pay rates were taken from the [Black Coal Mining Industry Award](#) that stipulates the following:

- The minimum hourly pay to be paid to fulltime workers up to 7 hours in any day capped at 35 hours in a week.
- Overtime 'loadings' (being percentage multipliers of the 'ordinary' pay rate) applying to shift work. When working:
 - Weekday afternoon or rotating nights x 115%
 - Saturday afternoon or rotating nights first 4 hours x 172.5%
 - Saturday afternoon or rotating nights after 4 hours x 230%
 - Sunday afternoon or rotating nights x 230%
 - Public holidays x 330%

The award classifies workers into six different categories as follows:

- a. Mineworker – Induction level 1
- b. Mineworker – Induction level 2
- c. Mineworker – Training
- d. Mineworker
- e. Mineworker – Advanced
- f. Mineworker – Specialised

Different minimum hourly pay rates apply to each category.

The great bulk of workers in the coal mines work under classification (d) Mineworker.

For the purposes of this research, the minimum hourly pay for this category (d) Mineworker has been used.

In financial year:

- 2022, the minimum award ordinary hourly rate was \$28.53
- 2023, the minimum award ordinary hourly rate was \$30.17

As the spreadsheet (Appendix 1) is for a full calendar year the two different minimum award hourly rates have been applied as follows:

- | | |
|-----------------------------------|---------|
| • 1 January 2023 to 30 June 2023 | \$28.53 |
| • 1 July 2023 to 31 December 2023 | \$30.17 |

With all these formulas and pay rates inserted into the spreadsheet (Appendix 1) a **full-time employee mineworker** working this potential/theoretical yearly roster would have:

- **Worked 2,275 hours**
- **Earned a base income of \$120,849**
- This equates to \$52.84 an hour

Additional entitlements

In addition to the base income, a full-time coal mineworker employee is entitled to the following:

- Six weeks' holiday a year. This is made up of:
 - The normal four weeks' holiday required under the *Fair Work Act*.

- An additional 1 week required under the *Fair Work Act* for anyone who works shifts.
- An additional 1 week for shift work under the Black Coal Award.
- Plus 20% leave loading under the Black Coal Award.
- Plus personal (sick etc.) leave under the Black Coal Award.
- Plus 11 days public holidays.

Taking these additional entitlements into account, the full-time coal mineworker working this potential/theoretical yearly roster would have earned:

- \$133,650 in the year.
- This equates to \$58.44 an hour.

It should be noted that this figure is on the low side because several factors are not included in the modelling in the spreadsheet (**Appendix 1**). These exclusions are:

- 1) Long Service Leave appropriation.
- 2) Any other allowance beyond night shift, overtime and weekend pay rates.
- 3) No Allowance made for Public Holidays as worked - Add 200 percent for those worked as single time already calculated.
- 4) Non-award production and other bonuses that are sometimes paid.

NB: Overtime may be slightly understated as the calculation is based on a daily basis rather than a 'roster' basis. Usually a roster is weekly/fortnightly but the roster provided is annual. Should not amount to a large variance.

2.4. Step 4: Apply casual loading

- **Convert a full-time employee income into what a casual would/should earn over a year under the award.**
- **Convert that full year's income into what an award casual employee should earn as a flat hourly \$ rate.**

Under the Black Coal Mining Award, a casual worker must be paid an additional 25% over what a full-time employee earns. This additional 25% is standard under the *Fair Work Act* and compensates or 'pays out' entitlements for holidays, paid personal leave and so on, and includes a compensation amount for not having permanent work.

To calculate what a casual should be paid, the full-time base rate (above, Step Three) of \$120,849 must have 25% added (i.e.: 25% of \$120,849 being an additional \$30,212). This means that under this potential/theoretical spreadsheet (Appendix 1) a **Casual mineworker should earn \$151,061 a year.**

Divide this by the number of potential/theoretical hours that can be worked—2,275—and a **Casual mineworker should earn \$66.40 an hour** as a minimum.

Important Note: There are some industrial relations professionals who are involved in negotiating enterprise agreements in the black coal mining sector who argue that the 25% casual loading does not apply to overtime rates (evening, nights, weekends). That is, they argue that the 25% casual loading only applies to ordinary hours (35 hours Monday to Friday). If this were true, the final amounts arrived at in the spreadsheet (Appendix 1) would be considerably lower.

However, the Black Coal Award is specific on this issue. [It states at Clause 21.3 \(b\)](#): “All time worked in excess of or outside ordinary hours ... will be paid at 225% of the minimum hourly rate. Note: Where clause 21.3 refers to a rate as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable.”

The scenario used in this assessment follows the Black Coal Industry Award’s requirements.

The calculations from this potential/theoretical yearly applied work roster provide one clear fact.

- **No casual employee working as a mineworker in the black coal sector should be paid less than \$66.40 an hour on a flat rate basis.**

Any enterprise agreement that paid casual employees a flat rate below \$66.40 an hour in 2023 is in breach of the award and fails the BOOT. Such agreements should not be approved/endorsed by the Fair Work Commission.

Note: It is important to understand that there is argument around the non-use of casuals under the Black Coal Industry Award and the legal implications of this for enterprise agreements. This shall be discussed in the second part (The commentary) of this report.

2.5. Step 5: Identify casual hourly rates contained in Enterprise Agreements

A range of coal labour hire enterprise agreements were reviewed when conducting this research. Five were then focused upon, as they constitute some of the major enterprise agreements supplying considerable numbers of workers in the coal mines.

The six agreements are:

- **Chandler Macleod** Queensland Black Coal Mining Agreement 2020
- **TESA Group** Enterprise Agreement 2022
- **WorkPac** Coal Mining Agreement 2019
- **CoreStaff** NSW Black Coal Mining Industry Enterprise Agreement 2018
- **FES Coal Pty Ltd** Greenfield Agreement 2018

Each of these enterprise agreements is [available online](#).

2.5.1. General Comments on Enterprise Agreements

People who haven’t read an enterprise agreement usually find them long, complex, convoluted and hard to read. Gaining a clear understanding of their content is often difficult. They use a legalistic style of language and are generally not user-friendly for the lay person. Specialised knowledge and experience are needed to be sure that one has a complete and correct understanding.

There are three broad types of agreements. They are:

- Agreements negotiated between a union and the employer.
- Agreements directly with the employees and the employer but where a union is a party to the agreement.
- Agreements directly with the employees and the employer but where a union may not be a party to the agreement.

Agreements:

- typically have a start date and last for 3–4 years.
- build in pre-agreed wage rises for each year of the agreement.
- have an expiry date, but the agreement remains ‘live’ until a new agreement is reached, or the parties formally terminate the agreement.
- are not legally operative (or terminated) until formally approved/endorsed by the Fair Work Commission.
- cannot have clauses or conditions that breach the National Employment Standards (NES) stipulated in the *Fair Work Act* and/or the relevant award; and
- must provide conditions that make the workers ‘better off overall’ in relation to the relevant award (as discussed above).

2.5.2. General Comments on the Five Coal Agreements in this Study

These five agreements are perhaps generally more complex to read and understand than many other enterprise agreements.

They all have some common features, however. For instance, they all:

- Have provisions to employ coal miners as casual workers. In fact, in most cases the larger percentage of workers they employ work as casuals.
- Pay workers on a flat hourly rate for any/all hours worked.

What is perhaps ‘strange’ is that in some of the agreements the flat rate to be paid to casuals is not listed in the agreement. Instead, the labour hire company provides ‘undertakings’ in the agreement that they will ensure that the flat rates do not leave the workers worse off. Moreover, how those flat rates are calculated is not mentioned or revealed in the agreements to the Fair Work Commission. The exception to this is the Corestaff agreement.

Further, and quite surprising, is that not once in any of the agreements is there a reference to the actual comparative casual flat \$ rate under the award or Act that should be the minimum flat \$ rate paid under the agreement/s.

In assessing the enterprise agreements, this report has made use of the actual labour hire companies’ enterprise agreements together with information obtained where the companies have revealed their attitudes to what they consider to be their legal obligations. Section D (below) includes source information obtained.

With this general background in mind, the following summarises the relevant parts of each of the enterprise agreements.

2.5.3. Chandler Macleod Queensland Black Coal Mining Agreement 2020

Assessing the flat hourly pay rate paid by Chandler Macleod in 2023 was fairly straightforward. This is listed in the [2020 enterprise agreement](#) page 27.

We have taken the *Mineworker Level 2, 12.5 hr flat rate–casual* as the appropriate comparative rate to the award rate we have identified and explained above. **That rate is \$48.85.**

Note that:

- Chandler Macleod provided undertakings not to pay below the award. ([page 36, 2020 Agreement](#))
- The union—the CFMEU—was a bargaining representative for the original 2015 Agreement, supported approval of the Agreement and was/is a party to the 2020 Agreement. (See Statutory Declaration and [page 1 of 2020 Agreement pdf.](#))

2.5.4. TESA Group Enterprise Agreement 2022

Assessing the flat hourly pay rate paid by TESA in 2022 was fairly straightforward. This is listed in the 2022 enterprise agreement page 10. (See screenshot excerpt below at 12.)

We have taken the *Mineworker Level 2, 4 Panel 12hr Rotating shift – casual* as the appropriate comparative rate to the award rate we have identified and explained above. **That rate is \$48.28.**

Note that:

- The union—the CFMEU—is a party to the Agreement.

2.5.5. WorkPac Coal Mining Agreement 2019

The WorkPac Agreement is long (86 pages).

We have taken the *Level 3 Mineworker (Experienced)* – (page 67, pdf of the Agreement) – as the appropriate comparative rate to the award rate we have identified and explained above.

Some explanation of the flat rates' construction is needed. There are four flat rates applied for work up to 45 hours in a week, namely:

Monday–Friday Day	\$42.99
Monday–Friday Afternoon/Night	\$49.44
Monday–Sunday day	\$46.56
Monday–Sunday Afternoon/Night	\$51.38

Given that our award spreadsheet comparison (Attachment 1) works on rotating (set) shifts averaging 43.75 hours a week, we assess these four flat rates to be the appropriate comparisons to use.

Note, the Agreement table (pdf page 85 of the Agreement and shown below) includes rates for overtime (more than 45 hrs) and non-rotating (not set) shifts. These can be removed from the assessment as such hours are outside the scope of the award comparison (Attachment 1).

For the purposes of choosing one best comparative flat rate, we have chosen the highest of the relevant four. **That rate is \$51.38.**

Note: We are aware that this will reflect a higher pay scenario than what would presumably happen in practice, as most work would be done on the lower flat rate hours.

The Agreement was negotiated and approved by the CFMEU. (Agreement page 1 see extract in appendices.) The Agreement was current to 2023.

2.5.6. CoreStaff NSW Black Coal Mining Industry Enterprise Agreement 2018

The CoreStaff Agreement spends the first 48 pages covering long and legally complex technical arguments concerning numerous aspects as to whether the Agreement passes the Better Off Overall Test (BOOT).

Once this is done, the Agreement itself does provide a way to identify the flat casual rate for 2023. It's a little complicated to follow, but it does work.

1. The table at 12.1 (shown below) of the Agreement details all the base (ordinary hours) pay rates for each classification under the Agreement as of 2019. We have taken *Mineworker Production Level 3* as the appropriate comparative classification for this report. The base casual rate is \$32.39 per hour (see below).
2. Clause 12.3 stipulates the agreed percentage increase of the base rate through until 2023, being 3% each year. (It allows for higher increases if determined by the Fair Work Commission.)
3. The table at pdf page 78 of the Agreement shows the formula used to convert the base rate/s into flat/all-in rates.

Applying these three steps, the 2023 flat rate for Mineworker Production Level 3 is as follows:

2019	2020	2021	2022	2023	
	0.97	1.00	1.03	1.06	Add 3% to casual base
32.39	33.36	34.36	35.39	36.46	base casual M-F 35hrs
				56.16	Roster Flat rate x 54.06%

That rate is \$56.16

Notes: This rate could be lower than the actual rate paid if the Fair Work Commission has awarded higher increases. This is unknown. However, the \$56.16 provides a workable comparative rate.

The CFMEU was not a bargaining agent in the Agreement, but lodged objections to aspects of the Agreement and is recognised under the Agreement.

See extracts at appendices.

2.5.7. FES Coal Pty Ltd Greenfield Agreement 2018

The Agreement has a table showing base, full time, ordinary hourly rates of \$29.81 for 2023 for an Experienced Mineworker (see table below, clause 10.9 of Agreement). We assess this as the appropriate comparative classification to the award for this report.

Adding 25% for casuals and the base casual rate is **\$37.26 for 2023**.

Even though FES operates rotating shifts 24/7 rosters, the Agreement does not give any indication of how flat rates are calculated. However, in evidence in Senate Hearings on 31 October 2023 in Rockhampton, FES casual employee Dwayne Arnold stated that the flat rate that he was being paid was \$54 an hour. Mr Arnold further confirmed the \$54 an hour figure in a subsequent text. (See below Hansard in appendices and text.) We use this rate for this report. **That rate is \$54.00.**

The Agreement was made with the CFMEU (clause 4, page 1 of Agreement).

See extracts at appendix.

2.6. Step 6: Overview and Conclusion

Compare the Award-Required Casual Pay to the Enterprise Agreement/S Casual Pay

The following table provides the results of the research giving near approximates.

On average, across the five Agreements, the:

- flat casual hourly rate approximates \$51.73
- yearly income approximates \$118,315.66

The award required minimum flat rate was \$66.40.

The award required minimum yearly income was \$151,061.

The average:

- hourly underpayment approximates \$14.67 per hour
- yearly underpayment approximates \$32,745.34.

Labour Company	Hire year	Union	Casual Flat Rate 2023	EA Classification most closely fits to Award Mineworker	EA to	Annual based on 2287 hours worked	Difference between award and EBA
Chandler Macleod	2020	CFMEU	\$ 48.85	Mineworker Level 2		\$ 111,719.95	\$ 39,341.05
TESA Group	2022	CFMEU	\$ 48.28	Mineworker Level 2		\$ 110,416.36	\$ 40,644.64
WorkPac	2029	CFMEU	\$ 51.38	Mineworker level2		\$ 117,506.06	\$ 33,554.94
CoreStaff	2018	CFMEU	\$ 56.16	Mineworker Prod Lv3		\$ 128,437.92	\$ 22,623.08
FES	2018	CFMEU	\$ 54.00	Mineworker Experienced		\$ 123,498.00	\$ 27,563.00
Aver Hr EA rate			\$ 51.73	EA Av yrly income		\$ 118,315.66	\$ 32,745.34
							Av yr lost income

Award Required

12 hr shifts 2287 hrs/year casual loading. Applies all Hrs worked

\$ 66.40	Award required yearly income	\$ 151,061.00
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(Note: EA figures give best approximates)

3. INVITATION FOR CORRECTIONS

The data above is drawn from analysis of quite complex enterprise agreements to the application of known, standard roster arrangements across the coal industry sector. There is confidence in the analysis. But the figures have been constructed assuming a standard variation given the award and enterprise agreements complexity. If any of the parties involved in the construction, approving and implementation of these agreements, being the labour hire companies concerned, the CFMEU or the Fair Work Commission believe that there are substantial needed adjustments, there is an open invitation for any of the parties to submit detailed analysis of such adjustments.

**PART TWO
COMMENTARY**

4. COMMENTARY & COMPENSATION

This part of the report provides commentary on the wage theft conducted against thousands of coal miners working in Queensland and New South Wales.

The first part of our report is the presentation of the facts that demonstrate the wage theft that has occurred and is occurring. The wage theft is occurring because coal miners employed as casual workers through labour hire companies are paid less than what they should earn under the applicable award. Staggeringly, the union (the CFMEU), and the Fair Work Commission (FWC) are parties to this underpayment.

This second part is a commentary on the facts and issues examined in Part One.

Further, we explain the plan to compensate the affected coal workers. Compensation must be paid.

Note: To appreciate this commentary it is necessary that Part 1 be read first.

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4.1. HOW THIS REPORT CAME ABOUT

Around July 2019 several coal miners approached One Nation claiming that they were/are being underpaid. They had gone to their union, the Construction, Forestry, Mining and Energy Union (CFMEU), but considered that they were ignored. They had approached the Fair Work Ombudsman (FWO), but again believed that they were ignored.

One Nation Senator Malcolm Roberts took up the case. Senator Roberts has a background in the coal sector, having been a miner himself and also a mine manager.

One Nation spent considerable effort undertaking an analysis and seeking accurate information by:

- Questioning the Fair Work Ombudsman and the Fair Work Commission in Senate Estimates hearings and seeking detailed follow-up. The responses from the FWO and FWC were and remain inadequate, amounting to bureaucratic stonewalling in the opinion of One Nation.
- Making direct representation to the Labor government's Workplace Relations Minister, Tony Burke, seeking responses to the coal miners' wage theft in light of the Labor government's Loophole Bill. The responses from the Minister were and remain inadequate, amounting to bureaucratic and political stonewalling in the opinion of One Nation.

As a consequence of these inadequate responses, One Nation undertook further detailed research from about mid-2023. This report is the outcome of that research.

4.2. OVERVIEW OF THE OUTCOMES OF THE RESEARCH

4.2.1. Conclusion: Wide-spread Wage Theft

Part One of this report conducts an analysis of coal miner pay rates under the Award in 2023 and compares those to a range of coal miner pay rates under a range of labour hire enterprise agreements.

The findings are disturbing.

- On the analysis, coal miners working under labour hire enterprise agreements are being paid substantially less than they should be paid under the Award (the [Black Coal Industry Award](#)). This constitutes major wage theft.
- The underpayments range from \$22,623 to \$40,644 for each miner in 2023 depending on the labour hire enterprise agreement under which they are working.

Five enterprise agreements were examined in detail forming the basis of the report. Across the five agreements, the **average**:

- hourly underpayment approximates \$14.67 per hour.
- yearly underpayment approximates \$32,745.

This table shows the breakdown by enterprise agreement (EA).

Labour Hire Company	Year of EA	Union involved	EA Casual Flat Rate 2023	EA Classification EA most closely fits to Award Mineworker	Annual income based on 2287 hours worked	Difference between award and EA
Chandler Macleod	2020	CFMEU	\$ 48.85	Mineworker Level 2	\$ 111,719.95	\$ 39,341.05
TESA Group	2022	CFMEU	\$ 48.28	Mineworker Level 2	\$ 110,416.36	\$ 40,644.64
WorkPac	2029	CFMEU	\$ 51.38	Mineworker level2	\$ 117,506.06	\$ 33,554.94
CoreStaff	2018	CFMEU	\$ 56.16	Mineworker Prod Lv3	\$ 128,437.92	\$ 22,623.08
FES	2018	CFMEU	\$ 54.00	Mineworker Experienced	\$ 123,498.00	\$ 27,563.00
Aver Hr EA rate			\$ 51.73	EA Av yrly income	\$ 118,315.66	\$ 32,745.34
			Award required yearly income		\$ 151,061.00	Av yr lost income
Award required hourly flat rate			\$ 66.40			

(This table and summary is a replication from section 9 of Part One.)

It needs to be understood that there are likely thousands of coal miners affected. The underpayments are believed to have been occurring for at least a decade. Yearly underpayment per year is (speculatively) in the tens of millions of dollars. Over the years the accumulated underpayments are likely to be in the many hundreds of millions of dollars.

4.2.2. Parameters of the Research

There are a large number of labour hire enterprise agreements operating under the umbrella of the [Black Coal Industry Award](#). The research studied a number of the agreements, five of them in detail. The five constitute significant agreements, reflecting common agreement approaches across the sector through which large numbers of coal miners are employed.

The research looked only at the employment of casual workers and compared what the workers should earn under the Award with what they are earning under the enterprise agreements.

The study compares award pay rates in 2023 with enterprise agreement pay rates in 2023. By studying just the rates from 2023 the structure and facts of the underpayments could be calculated with some degree of accuracy. However, it's accepted that there would likely be some minor variations given that the agreements and the award have pay rate 'oddities' around specific items (for example, first aid allowance). The research erred on the conservative side of calculations.

The analysis for 2023 provides a template for application back across the years over the last decade. One Nation's investigations indicate that the wage theft underpayments go back at least a decade.

4.2.3. How the Underpayment has Occurred

In simple terms:

- **Labour hire companies** have created enterprise agreements where significant numbers, even the majority, of coal miners are employed as casuals.
- **The coal mining union, the CFMEU**, has either been active in the negotiations to create the agreements, endorsed the agreements or sought to be a party to the agreements.

- **The Fair Work Commission** has approved the agreements.

Understanding Coal Mine operations:

Coal mines operate 24 hours a day, 7 days a week, 365 days a year. As a result, a 35-hour work week is not standard. Rather, the standard is that coal miners work seven, 12.5-hour rotating shifts a fortnight anytime, any day within the 7-day (Monday to Sunday) week throughout the 365-day year. *In addition*, the enterprise agreements convert all pay to an 'all in' flat hourly rate. That is, whatever hours a worker works, the worker is paid a standard flat hourly rate.

In taking this (24/7/365) roster system with flat rates of pay and applying this to the Award requirements, the minimum casual hourly flat rate that should have been paid in 2023 is \$66.40.

None of the labour hire enterprise agreements pays this as a minimum. All are well below. It would appear that this happens across the entire coal mining sector.

How, then, have the labour hire companies, the CFMEU and the Fair Work Commission allowed this to occur? It is illegal for an enterprise agreement to pay workers less than the award. How has this been done to coal miners?

4.2.4. The Scam

One Nation says that this has occurred because of what amounts to a scam. The scam has used a legal technicality to justify the underpayments. Each of the parties—the labour hire companies, the CFMEU and the Fair Work Commission—has been involved in the scam.

The scam works like this.

- There is a clause in the Black Coal Industry Award that makes it illegal to employ coal miners under the award as casuals. The award allows for 'staff' to be employed as casuals (but not coal miners). Casual staff must be paid a 25% casual loading under the award.
- The labour hire companies, however, have created enterprise agreements that allow them to employ coal miners as casuals. The mining union, the CFMEU, has either negotiated the agreements, endorsed them or sought to be a party to the agreements.
- But, in none of the agreements investigated have either the labour hire companies or the CFMEU considered what a casual miner would earn under the award if casual employment were allowed under the award. **
- According to the analysis under Part One of this report, the rates of pay established under the enterprise agreements are clearly less than what should be paid under the Award if the use of casual mine workers were allowed.
- The Fair Work Commission has approved/endorsed these agreements allowing the use of casual mine workers. At no time has the Fair Work Commission compared the casual rates paid under the enterprise agreements to what a casual miner would earn under the award if casual employment were allowed under the award. **

- The outcome is that coal miners across the sector who are employed as casuals through labour hire companies are paid less than what they would be entitled to if casual employment were allowed under the award.

There is no doubt that this is a scam in which the use of technical legal argument has been applied to make 'legal' the underpayment of workers. That is, the argument goes (or would go) that because coal miner casual employment is not allowed under the award, then what should be paid to a casual miner under the award (if casuals were allowed) can be ignored.

This is legal trickery in the opinion of One Nation.

The labour hire companies, the CFMEU and the Fair Work Commission have then each argued or accepted that the agreements mean that the workers are 'better off overall' (the BOOT test) when working under the agreements. This 'better off overall' finding occurs with each enterprise agreement, even though each agreement pays well below what would be paid under the award if the award allowed for casual miners. Moreover, the 'better off overall' findings occur even though each enterprise agreement pays different rates.

Some of the enterprise agreements studied have long legal discussions included within them about paying casuals 25% more. But what is crucially missing is what that 'more' actually is. The references studied talk about 'more', but not within the context of what should be paid under the award.

The observation is that monetary figures explaining 'more' seem to be lifted from thin air. Yes, there are long, convoluted, legalistic arguments that are indecipherable to the layperson, coal miners and many lawyers who studied the agreements as part of the research for this report. Yet the labour hire companies, the CFMEU (in one way or another) and the Fair Work Commission have signed off on these arguments thus providing the legal 'justification' for approving the agreements.

The entire process is legal trickery that amounts to a scam in the opinion of One Nation.

There are three parties involved in this scam, the labour hire companies, the union (the CFMEU) and the Fair Work Commission. Clearly each of these parties will predictably cry loud and long that the 'scam' is not a 'scam' and the underpayment of the workers was and is perfectly legal for the reasons explained above. But this excuse does not 'fly' with One Nation.

Neither do we believe it would 'fly' with Australians once they become aware of the underpayment. The technical legal excuse is just that—an excuse.

4.3. THE MOTIVATIONS

4.3.1. Overview

That this scam could occur and occur for such a long time (a decade, at least, we suggest) is puzzling. After all, isn't Australia's industrial relations system supposed to protect workers from underpayment? In this section of the report we offer some views and opinions as to how and why this underpayment scam of coal workers has been allowed to happen.

There is an old saying: If you are forced to choose between a stuff-up and a conspiracy, always choose a stuff-up. In this case, however, the scam is so large and been occurring for so long that, once it's understood, it is obvious that we are obliged to reject the 'stuff-up' excuse. Instead we, One Nation, view this as a conspiracy.

It's a conspiracy in our view because the three players—the labour hire companies, the CFMEU and the Fair Work Commission—each had to agree, acquiesce or comply with the legal argument used to justify the scam. At any time, any of the three parties could have called out the obvious, common-sense wrongdoing of the scam—namely, that workers were and are being underpaid measured against what they should have been paid under the award (assuming casuals were legal under the award).

What, then, were and are the motivations for the scam? What follows is a speculative view of the possible motivations. We cannot know the actual motivations. We can only know the outcome of the behaviours of the three parties.

4.3.2. The Labour Hire Companies

The motivations of the labour hire companies are fairly easy to guess.

The award bans the use of casual coal miners. Therefore, the coal mining companies are restricted to employing full-time mine workers at the minimum costs structure under the award. The coal mining companies cannot directly employ casuals.

This opened a commercial opportunity for the labour hire companies. If the Fair Work Commission were to approve enterprise agreements that allowed for casuals, then the labour hire companies could offer casual workers to the coal mining companies. This is exactly what has happened.

This outcome would perhaps have been perfectly acceptable if the rates of pay to the labour hire casual coal workers had been above what would have been paid under the award (if casual coal miners were legal under the award). That is, if the casual rate of pay took as the minimum the award's full-time employee rate and added 25 per cent. But no.

What has happened instead is that the Fair Work Commission has approved enterprise agreements that clearly pay **below** the award's full-time employee rate plus 25 per cent.

It can only be assumed that the labour hire companies would have been delighted with this. They have been able to offer casual labour hire coal workers to the coal mining companies at costs below those required under the award.

And there's an important note. The assessment in Part One of this report assesses the wage theft at 2023 prices under current enterprise agreements that came into existence in 2018, 2019 and 2020. But from One Nation's observations, these agreements are just updated agreements that first began to appear in 2010. That is, the scam of enterprise agreements allowing so called casual mineworkers has been going on since the inception of the Modern Award System.

Questions: Have the labour hire companies passed on the lower labour costs to the coal mining companies? We don't know. Have the lower labour costs been kept by the labour hire companies as higher profits? One Nation assumes so, but we don't know. Have the lower labour costs (wage theft) been shared with other parties such that the wage theft would amount to a serious conspiracy? One Nation has no idea and makes no accusations. But given the scale of the wage theft over a decade at least, the question must be asked.

4.3.3. The Fair Work Commission

What totally staggers One Nation is that this wage theft could not have occurred, and occurred for so long, without the Fair Work Commission's approving the wage theft enterprise agreements.

Has the Fair Work Commission simply been grossly incompetent or has something else been going on? One Nation has no idea. But the incompetent excuse must be rejected. The Fair Work Commission is supposed to be the expert authority in Australia on such matters, and has the specialist knowledge and resources to make clear assessments as to whether workers are being underpaid or paid above minimums.

Instead, what has been uncovered in the research is that Fair Work Commission engaged in lengthy, convoluted and, to any reader of the enterprise agreements, complex legal arguments that have given legal justification to the agreements. The Fair Work Commission will, we assume, revert to these legal arguments to claim that it has done nothing wrong, that its assessments have been entirely 'legal'.

But in the research undertaken by One Nation we can find no instance ** where the Fair Work Commission has done a simple analysis that calculates what casual employees would have earned under the award (if the employment of casual coal miners were allowed under the award). [Hereafter referred to as 'the simple analysis'.] Why has the Fair Work Commission failed to do this? We do not know. It would seem common sense.

It must be remembered that the Fair Work Commission has wide discretionary powers of investigation. It would have seemed obvious that the Commission should have undertaken the simple analysis as we have done in this report, or something very similar.

In undertaking our investigations following approaches and complaints from frustrated coal miners, One Nation, through Senator Malcolm Roberts, questioned both the Fair Work Commission and the Fair Work Ombudsman on this issue. As explained previously in this report, the responses from both authorities were entirely inadequate from One Nation's perspective. In fact, we found the responses to be bureaucratically evasive. Responses that 'ran around in circles'.

The questions Senator Roberts asked took place during the earlier phase of our investigations. We were trying to understand the apparent complexity of the arguments being made around the pay rates. In effect, we found that those arguments were almost designed, we feel, to divert attention from the real and crucial issue—the simple analysis..

At that stage, One Nation was acting on the seeming 'confusion' in the information supplied to us from coal miners themselves. The coal miners themselves are confused. One Nation's observation is that the coal miners have a keen sense that they are being underpaid but cannot pinpoint why. And they are being constantly fed responses to their queries that add to their confusion.

This is why Senator Roberts repeatedly grilled the Fair Work Commission and the Fair Work Ombudsman in Senate Estimates in order to gain clarity. And it was and is because of that obfuscation from the two authorities that One Nation decided that we needed to focus on the simple analysis.

One Nation finds it incomprehensible that the Fair Work Commission did not and still has not undertaken that comparative exercise. The Commission had at all times (and still has) the discretionary power to undertake such an exercise. The Commission could have 'called out'

this comparison at any time, exposed the underpayments and even, it must be assumed, stopped the underpayments. One Nation condemns the Fair Work Commissions for this failure.

This failure has directly resulted (it would appear) in thousands of coal miners being underpaid for at least a decade.

The failure of the Fair Work Commission and the Fair Work Ombudsman on this issue is institutional failure of highly concerning dimensions. It is failure that calls into question the entire structure, promise and integrity of the system in Australia that is supposed to protect Australians from underpayment.

On this issue the 'independent umpire' has failed in the most dramatic of ways.

That this failure has been occurring for such a long time across the entire coal mining sector cannot be put down to a 'one off'. The failure calls into question the integrity of the entire industrial relations system. If a scam of this scale can occur, is the entire industrial relations system a scam being conducted against all Australian workers?

4.3.4. The Construction, Forestry, Mining and Energy Union (CFMEU)

The CFMEU is arguably one of the most vocal and aggressive union defenders of workers' rights in Australia. Yet its lack of defence for the underpaid coal miners in the Australian Black Coal Mining Industry covered in this report is stark and concerning. Not only has the CFMEU failed to defend the underpaid workers, it has clearly and obviously been party to the underpayments by negotiating the agreements, being a party to the agreements or seeking to be covered by the agreements.

One Nation asks the same question of the CFMEU that we ask of the Fair Work Commission. Why is it that at no time has the CFMEU ** done what One Nation has done in this report, that is, conduct the simple analysis and calculate the proper rates of payment for casuals under the EAs?.

The CFMEU has had the ability to do this simple comparative exercise for a decade. It still does. . Yet it has not**. Why not?

The CFMEU is historically a supreme media organisation with an ability to attract wide and high-profile attention to an issue. At any time it could have drawn attention to the underpayments. It could have campaigned against the underpayments. It could have objected to the underpayments directly to the Fair Work Commission.

If it had campaigned against the underpayments, publicly and directly to the Fair Work Commission, it is almost inconceivable that the underpayments would have continued. At all times the CFMEU has arguably had a powerful capacity to stop the underpayment wage theft of the coal miners.

Yet, instead, the CFMEU has done nothing. In fact, it is our belief, based on reports from coal miners themselves, that the CFMEU has been an integral part of the scam. The miners feel that the CFMEU, while making noises about 'evil' employers, has ignored the underpayments in comparison to the award. It's almost as if the CFMEU has acted as a 'shield' for the underpayments, diverting attention from the underpayments to other issues. This is at least the impression felt by coal miners who have approached and reported their concerns to One Nation.

4.3.5. CFMEU Wealth as a Big Business in The Hunter Valley

It should be understood that the CFMEU is immensely wealthy. It has a long history of being involved in commercial enterprises in the coal sector in the Hunter Valley.

(Note: In this report 'CFMEU' is used as a main term for the mining union in the Hunter Valley. The union has undergone restructuring and reorganisation over many decades given fluctuations in leadership as a result of power plays within the union. The name 'CFMEU' is used to cover many iterations.)

The following is a summary of some information that One Nation has been able to obtain about the CFMEU's commercial interests in the Hunter.

- In 1979 the CFMEU (then the Mine Workers Federation) was granted a lease over the worked-out-Nymboida Mine. The lease was eventually transferred to the United Colliery in the Hunter Valley and started a joint venture mining operation with a traditional mine operator in 1991. The Mine Workers Trust was legally established in 1991 to hold profits from the operations.
- The terms of the Joint Venture required 5 per cent of the profits to go to the Trust. Xstrata Coal (now Glencore Coal) was the joint venture partner. The CFMEU's share of profits from the joint venture in 2005 were some \$5.6 million
- In 2005 it is documented that the CFMEU had lent an Xstrata company named Abelshore over 2.4 million dollars.
- In the 21/22 Financial years Abelshore, now owned by Glencore, the AEC Transparency register records an "other receipt" of over 8.7 million dollars to the CFMMEU.
- Joint venture interests potentially extend to Mount Thorley Coal Loading Limited and Newcastle Coal Shippers Pty Limited.
- The Coal Services Annual Report 2005/2006 shows that Coal Services had lent over 1 million dollars to Mt Thorley Coal Loading. (Coal Services is half owned by the CFMMEU at this time)
- The CFMEU's commercial activities now include a stake in the joint venture through United Collieries (Glencore and CFMEU) with Wambo Coal (Peabody) in the United Wambo Joint Venture Open Cut coal mine.
- The CFMEU had a long historical involvement in a labour hire business from 1992 until 2004, known as United Mining Support Services. The name was changed several times to Australian Labour Network and acquired by Tesa Mining and ultimately Skilled in 2006. In 2014 Programmed acquired TESA.
- In October 2014 the union purchased an office building in Sydney for \$18.5 million with proceeds believed to have come from the Trust. It is believed the last valuation was \$28 million, with revenue from leasing of office space going to the Union.

- The CFMEU owned half of Auscoal Services, which conducted all operations of the Coal Long Service Leave Corporation from 1993 until 2017 without the involvement of the Australian Public Service under secret contracts that remained hidden until One Nation revealed their existence at senate estimates in May 2023

The summary above of the commercial interests of the CFMEU in the Hunter Valley is an overview and subject to clarifications if required. One Nation does not suggest that there is anything wrong with the CFMEU operating commercial enterprises. But such commercial activity does make the ‘bosses versus workers war’ upon which the CFMEU seems to pride itself in its campaigns look somewhat hypocritical. After all, the CFMEU is itself, or has been, a ‘boss’ by having direct ownership (at least in part) of mines, labour hire companies and more.

What is relevant in the foregoing information is that the CFMEU is not a disinterested party in the cost of labour in the coal mines in the Hunter Valley at least. The CFMEU has an extensive history of having direct commercial involvement in the mines and associated services and infrastructure. What the CFMEU’s commercial involvement is as of 2024 is not known. But it would perhaps be naïve to think that, with such an extensive commercial history, the CFMEU does not have continuing commercial links, associations and ‘understandings’ that compromise the CFMEU as a defender of the rights of coal miners in the Hunter Valley at least, and possibly beyond.

If the CFMEU had raised the issue, objected to and campaigned against the underpayment of coal miners as described in this report, the existence of its commercial interest in coal mines and services would not have entered the thoughts of One Nation. But given the CFMEU’s commercial interest combined with the CFMEU’s allowing and even supporting the underpayments, One Nation accuses the CFMEU of being entirely compromised. No coal mine worker can trust the CFMEU.

4.4. FIXING THE WAGE THEFT

With the release of this report, One Nation fully expects the labour hire companies, the CFMEU and the Fair Work Commission and Fair Work Ombudsman to all claim that they have done nothing legally wrong. On this they may well be correct. That perhaps would be for a real judge to evaluate and decide, should any party seek to challenge the legal basis of the underpayment. (We will call this legal ‘trickery’ for the purpose of conducting a massive scam).

4.4.1. The Coal Miners

Our assessment of the flat casual award rate that should be paid under the award in 2023 if casual work were allowed is **\$66.40 an hour**.

Our calculation of the yearly income the miners should have earned in 2023 is **\$151,060**.

Some may look at this and think that this is a high rate of pay. But it must be remembered that these workers are working close to a 44-hour week and working days, evening, nights, Saturdays, Sundays and public holidays through a 365-day-a-year roster system. The workers are often working in dangerous conditions, most often underground, and are driving or responsible for multi-million-dollar mining machinery. One Nation considers that in this context the rates and incomes that the coal miners should be earning as a minimum under award-comparisons is modest at most.

The fact that they are being paid below these rates is a scandal of major proportions.

How many miners are subject to this wage theft?

Actual numbers are unknown. However, in a Budget Estimates hearing on 27 October 2020, One Nation Senator Malcolm Roberts asked of the PA-Coal Mining Industry (Long Service Leave Finding) Corporation how many casuals were on their books. The response was as follows:

As at 30 June 2020, Coal LSL held entitlement records for 29,925 casual employees, of which 9,835 were active in the industry.

In other words, it's highly probably that the number of casual coal miner victims of this wage theft could reach 10,000 in any year and could exceed several tens of thousands over the last decade.

4.4.2. The Incumbent Labor Government

The Albanese Labor government is proceeding with its industrial relations reform Bill, the Loophole Bill. It has already had several aspects of that Bill passed, including the so called 'Same Job Same Pay' provisions. However, One Nation's assessment of these provisions is that the wage theft described in this report will not be addressed or stopped by the Loophole Bill.

Because of our concerns, One Nation Senator Malcolm Roberts wrote directly to the Minister for Employment and Workplace Relations, Tony Burke on 19 September 2023 expressing concerns about the coal miners' wage theft. The response from the Minister has been similar to that received from the Fair Work Commission and the Fair Work Ombudsman—inadequate, amounting to bureaucratic obfuscation.

And it is not as if Minister Burke is unaware of the coal miners' situation. On 28 March 2023 Minister Burke said this in Parliament:

“Effectively, the challenge is this: workers in the black coal industry are in an industry where, under the award, casuals don't exist. Under the award, it's only part time or full time, but under a series of enterprise agreements casuals have been established. I can explain how that means they end up not getting their entitlements...”

Yet the Minister and the government ignore the wage theft. One Nation has given up any hope that the government will move to stop this wage theft and to compensate the coal miners for the theft over many years.

One Nation therefore is/has moved an amendment to the Loophole Bill specifically to address and fix the wage theft being conducted against coal miners.

A layperson's draft of the amendment is below. (Note this is being redrafted to fit legislative form, but is included in this report in this format to enable ease of understanding.)

4.4.3. Proposed Amendment to the Loophole Bill

- 1) All enterprise agreements entered into where employees are supplied to worksites operating under the jurisdiction of the Black Coal Industry Award shall pay rates to **casual** employees that:

- 1a. Are the same or greater than the award minimum, full-time, employee rate plus 25 per cent.
 - 1b. where casual employees are required to work rosters anytime within a 24-hour, seven-day-a-week schedule, that in calculating the pay rate, the rate must be the same or more than the award rate applicable to direct employees working under the award taking into account all award loadings required under the award, plus 25 per cent.
 - 1c. where the casual rate under (1b) is converted to a casual flat rate, the rate must be the same or greater than what would apply under (1b)
 - 1.d where a casual flat rate under (1c) applies, the total remuneration paid to the casual employee over any given period of time must be the same or greater than what would apply under (1b).
- 2) The Fair Work Commission must by (date) undertake a review of all enterprise agreements operative under the jurisdiction of the Black Coal Industry Award and 2a. assess whether each Agreement complies with (1) and
- 2b. report to the Parliament with a list showing every Agreement that does not comply under (2a) and detail in the report any amounts of underpayment under each Agreement.
- 3) Where the Fair Work Commission has endorsed or approved an enterprise agreement that is currently operative and that does not comply with (1)
- 3a. the rates under the agreement are void as of (date).
 - 3b. Where (2a) shows payments below (1) the Fair Work Commission must adjust the rates under the Agreement to comply with (1) as of (date).
- 4) Where the Fair Work Commission has identified underpayment at (2)
- 4a. The Fair Work Ombudsman must conduct an audit of all Agreements identified to assess the underpayments made to each casual employee employed under each Agreement during the currency of each Agreement.
 - 4b. Each employer employing casual employees under Agreements identified at (2) must supply to the Fair Work Ombudsman a full list of casual employees employed under the Agreement showing pay rates and total remuneration paid to each casual employee for each financial year for the life of the Agreement.
 - 4b1. Failure to do so by (date) shall incur a penalty/fine of \$x per day.
 - 4c. The Fair Work Ombudsman must complete the audit and provide the audit as a report to Parliament by (date)
- 5) The audit and report to Parliament at (4c) shall be the basis upon which compensation for underpayment shall be paid to each employee.
- 5a. Compensation shall be paid to each employee without each employee having to make application.

- 6) Compensation shall be paid by each of the entities that were party to the creation of the enterprise agreements at (2). Those parties being:
- i. The employer under each Agreement.
 - ii. The industrial association that negotiated, made with, approved, supported or was/is covered by the Agreement.
 - iii. The Fair Work Commission.
- 6a. Each of the entities at (6) shall each pay one-third of the compensation entitlement.
- 6b. Failure to pay under 6a. shall be a criminal offence.

Footnote **

These comments are based on the research conducted for this report which has been extensive. However, if there is evidence that either the labour hire companies, the CFMEU or the Fair Work Commission did in fact conduct a comparative analysis to a purported casual rate under the award, there is an open invitation for that analysis to be provided to One Nation for consideration and adjustment to this report if warranted.

However in a full bench decision on an appeal by One Key to the quashing of a coal mining industry agreement, the full bench noted at Paragraph 209:

“The introduction of casual employment for production and engineering employees covered by the Black Coal Mining Industry Award was a relevant consideration that the Commissioner was bound to take into account; it was a step in the process of applying the BOOT. In failing to take it into account, the Commissioner erred in law in a way that affected the exercise of his power. It indicates that he failed to conduct the requisite comparison and so failed to apply himself to the question prescribed by sections 186(2)(d) and 193(1)...or, at least, failed to complete his statutory task... Whichever way it is characterised, the error is jurisdictional.”

5. APPENDIX Source References for Enterprise Agreements

Full copies of all referenced Enterprise Agreements are available at <https://www.malcolmrobertsqld.com.au/coal-mining-wage-rip-off-report/>.

5.1. Chandler Macleod

Screenshot from page 27 of the 2022 Agreement

Classification	From the first full pay period on or after 1 July 2023		
	Base rate	12.5hr flat rate – non-casual	12.5hr flat rate - casual
Mineworker Level 1	\$27.38	\$40.88	\$45.81
Mineworker Level 2	\$28.60	\$43.59	\$48.85

Chandler Macleod undertaking page 26 of pdf 2020 Agreement:

In calculating the total rostered earnings the employee would have received for working the hours they worked if they were paid according to the Award, penalty rates, overtime rates, shift loadings, and the casual loading would be applied on the same basis as for casual 'Staff' employees under the Award.

From page 1 of the 2022 Agreement:

[2] Mr Jeff Scales, District Vice President of the Construction, Forestry, Maritime, Mining and Energy Union – Mining and Energy Division (CFMMEU), filed a Form F18 in this matter, providing notice under s.183 of the Act that the CFMMEU wants the Agreement to cover it.

From CFMEU Statutory Declaration of the 2015 Agreement (model for the 2022 Agreement):

4. Does the CFMEU support the approval of the Agreement by the Fair Work Commission?
Yes

5.2. TESA Group - Enterprise Agreement 2022

Screenshot from clause 11.3 of the Tesa Agreement

Classification	Roster	From the first full pay period on or after the date of approval by the employees	From the first full pay period on or after the date of approval by the employees
		Hourly All Up Rates - Permanent Rates	Hourly All Up Rates - Casual Rates
Mineworker Level 1	4 Panel 12hr Rotating	\$42.45	47.91
Mineworker Level 2	4 Panel 12hr Rotating	\$42.77	\$48.28
Mineworker Level 3	4 Panel 12hr Rotating	\$45.63	\$51.50

5.3. WorkPac Coal Mining Agreement 2019

Screenshot from page 67- pdf of the Agreement

1 July 2023 – Flat Rates Casual CMW

		35-45 Hour Week		Overtime Rate
		Mon-Fri	Mon-Sun	
Mineworker A	Day	\$35.70	\$41.06	\$57.08
	Afternoon & Night	\$38.66	\$42.99	\$57.08
	Non Rotating	\$40.64	\$44.58	\$57.08
Mineworker 1	Day	\$38.52	\$44.29	\$61.58
	Afternoon & Night	\$41.71	\$45.81	\$61.58
	Non Rotating	\$43.84	\$48.10	\$61.58
Mineworker 2	Day	\$40.25	\$46.29	\$64.35
	Afternoon & Night	\$43.58	\$48.35	\$64.35
	Non Rotating	\$45.81	\$50.26	\$64.35
Mineworker 3	Day	\$42.99	\$49.44	\$68.74
	Afternoon & Night	\$46.56	\$51.38	\$68.74
	Non Rotating	\$48.93	\$53.68	\$68.74

Text from page 1 of the Agreement:

[6] The CFMMEU – Mining and Energy Division, “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want to be covered by the Agreement. In accordance with s.201(2) of the Act, I note that the Agreement covers the organisation.

5.4. CoreStaff NSW Black Coal Mining Industry Enterprise Agreement 2018

From Agreement pdf page 55 Clause 12.1

The following ordinary rates apply from approval;

Position	Permanent Base Rate	Casual Base Rate
Mineworker Production Level 1	\$24.00	\$30.00
Mineworker Production Level 2A	\$24.24	\$30.30
Mineworker Production Level 2B	\$24.42	\$30.53
Mineworker Production Level 3	\$25.91	\$32.39
Mineworker Production Level 4	\$27.16	\$33.95
Mineworker Production Level 5	\$29.95	\$37.44
Mineworker Engineering Level 1	\$24.24	\$30.30
Mineworker Engineering Level 2	\$25.66	\$32.08
Mineworker Engineering Level 3	\$27.96	\$34.95
Mineworker Engineering Level 4	\$30.83	\$38.54

PDF page 56 of Agreement:

(b) *Flat Rates*

- (i) *CoreStaff may implement flat rates of pay. Where flat rates are paid to an employee, the flat rate is received by the employee in satisfaction of and in compensation for any and/or all entitlements to penalty rates, shift loadings, overtime rates, other loadings and allowances which might otherwise apply to the employee (except as provided under the NES or in any mandatory terms of this enterprise agreement under the Act).*
- (ii) *Flat rates of pay will be calculated taking into account the specific roster pattern that an employee works.*

12.3. *Ordinary rates in this Agreement will increase in line with the following table:*

Date Increase

First pay period after July 1, 2019 3% or FWC increase whichever is greater
First pay period after July 1, 2020 3% or FWC increase whichever is greater
First pay period after July 1, 2021 3% or FWC increase whichever is greater
First pay period after July 1, 2022 3% or FWC increase whichever is greater

PDF page 78 of Agreement:

Flat rate roster

Rate Build Up

Agreement Level		Production Level 3		
Agreement Base Rate				\$25.91
Number of weeks in roster cycle	4			
Number of shifts in roster cycle	14			
Hours per shift	12.5			
Expected public holidays worked for year	7			
Component		No. hours	Rate (%)	Rate (\$)
Ordinary day shift hours M-F		50	125.00%	\$32.39
Ordinary day shift hours Saturday <4 hrs		4	175.00%	\$45.34
Ordinary day shift hours Saturday >4 hrs		6	225.00%	\$58.30
Ordinary day shift hours Sunday		10	225.00%	\$58.30
Ordinary night shift hours M-F		50	140.85%	\$36.49
Ordinary night shift hours Saturday <4 hrs		4	190.85%	\$49.45
Ordinary night shift hours Saturday >4 hrs		6	240.85%	\$62.40
Ordinary night shift hour Sunday		10	240.85%	\$62.40
Total Ordinary Hours		140		\$5,754.48
Average Ordinary hours		17.5		
Overtime day shift		17.5	200.00%	\$51.82
Overtime night shift		17.5	215.85%	\$55.93
Total Hours Worked Per Roster Cycle		175		\$1,885.57
Average Total Hours		43.75		
Public holiday accrual (in addition to Ordinary)		6.73	215.85%	\$55.93
Minimum Payment Per Roster cycle				\$8,016.48
Minimum Agreement flat rate				\$45.81
Additional site/market payment				\$4.09
Flat Rate for Specific Assignment				\$49.90

5.5. FES Coal Pty Ltd Greenfield Agreement 2018

Page 1 of the Agreement

[4]

Pursuant to s.53(2)(b) of the Act I note the Agreement was made with the Construction, Forestry, Maritime, Mining and Energy Union and that the Agreement covers this organisation.

Undertaking Annexure A pdf page 3 of Agreement:

3. casual employees working on a public holiday are entitled to be paid a casual loading of 25% In accordance with clause 8.9 of the Agreement.

Those employees are also entitled to be paid the public holiday penalty prescribed In clause 8.11 of the Agreement. The penalties are non-compounding.

Example:

Casual employee is working on a public holiday. For work during ordinary hours, the casual employee is entitled to a rate of 225% of the base rate.

10.9 The base rates of pay shall be increased by the rate of 2.5% on 1 July 2019 and annually thereafter during the nominal term of the Agreement.

Classification	Base rate hourly (permanent full-time, part-time and fixed term)				
	On approval	1 July 2019	1 July 2020	1 July 2021	1 July 2022
Inexperienced Mineworker (Award equivalent "Mineworker Training")	\$25.28	\$25.91	\$26.56	\$27.22	\$27.90
Experienced Mineworker (Award equivalent "Mineworker")	\$27.00	\$27.68	\$28.37	\$29.08	\$29.81
Experienced Trade (Award equivalent "Mineworker Advanced")	\$28.31	\$29.02	\$29.74	\$30.49	\$31.25

Proof Committee Hansard

SENATE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

(Public)

TUESDAY, 31 OCTOBER 2023

ROCKHAMPTON

Page 6 – Errors have been struck through, corrections in red font and correctional notes are bracketed (), also in red.

“:Senator ROBERTS: Could each of you tell me what the award value is for your job on the roster you're working?

Mr Arnold: I'm obviously a casual. Currently my award is \$54 an hour.

Senator ROBERTS: What is it for the year?

Mr Arnold: For the year—we get bonuses as well.

Senator ROBERTS: Just the award value of your work?

Mr Arnold: Yes, approximately \$120,000.

Senator ROBERTS: And?

Mr West: It's \$168,000.

Mr Mearse: **Mr Allen: It's \$120,000.**

Senator ROBERTS: And you're a permanent, aren't you? I don't mean to be pointing at you, but you're a permanent?

Mr West: Yes.

Senator ROBERTS: So, \$120,000? **(Mr Allen inaudibly repeats 120)**

Mr Mearse: So, \$175,000.

Senator ROBERTS: And you're a permanent?

Mr Mearse: Yes.

Senator ROBERTS: So, the two permanents are getting \$168,000 and \$175,000, and the two labour hire are getting \$120,000 and \$120,000. Are you aware that the current value of the black coal mining industry award for a mineworker on a base hourly rate of just \$30.17 is approximately \$160,000?

Mr Hughes: I'll have to ask, I suppose, because we might have different figures and different calculations to work that out.