

Mr Mark Irving QC  
Administrator  
Construction and General Division of the Construction, Forestry and Maritime Employees  
Union (CFMEU)

30 October 2024

Dear Mr Irving,

**Re: Lodging a complaint and request for investigation into the alleged activities of the CFMEU and officers of the CFMEU in relation to alleged potential or possible collusion to create enterprise agreements with labour hire companies such that casually employed coal miners employed within the ambit of the Black Coal Mining Industry Award (Award) have been and continue to be paid below a comparative Award rate.**

We write as the Independent Workers Union of Australia, an association of employees and independent contractors. We respond to [your invitation to report concerns](#) about the activities of the CFMEU both current and historical.

#### **Background to our complaint**

On 7 February 2024 Senator Malcolm Roberts gave a speech in the Senate in which he referenced a One Nation Report into the underpayment of casually employed coal miners working within the jurisdiction of the Black Coal Mining Industry Award. Senator Roberts stated the following

*“Our report details the largest wage theft scandal Australia has ever seen  
Coal miners have each had tens of thousands of dollars stolen from them -every  
year...”*

*The culprits are labour-hire companies supplying casual workers to some Central  
Queensland and Hunter Valley coal mines.*

*The CFMEU, Construction Forestry, Mining and Energy Union enabled and supported  
the wage theft.”*

Subsequent to the release of the One Nation report we studied its contents and methodology.

Attached is a copy of

1. Senator Roberts 7 February 2024 speech
2. The One Nation Report

3. The One Nation calculation spreadsheet supporting the report.

**Our Actions**

Using the methodology of the One Nation Report we have conducted assessments of the wage payments made to a number of our members who have worked and/or are currently working as casual coal miners through labour hire companies under the Award.

In undertaking these assessments, we have obtained from our casual coal mining members documentary evidence of their incomes during each relevant financial year and the pay rates they were or are paid during the relevant periods. With this information we have calculated the incomes our coal mining members received and compared that to the income they should have received when compared to the Award.

In each and every instance every miner, on the evidence available, has been substantially underpaid by tens of thousands of dollars. Given that some miners work history dating back to 2013 the sums of money underpaid per individual miner proves to be substantial. The assessed underpayments currently range between \$24,792 and \$211,948 for individual miners.

We have lodged our underpayment assessment for each mining member with the Fair Work Ombudsman who have established a specific process for review of our assessments. Each mining member has provided us written authorisation to act on their behalf on this matter. We have provided the FWO with appropriate supporting documentation and our calculations.

**The reason why the underpayments have occurred**

We have studied the relevant labour hire enterprise agreements under which the coal miners have been underpaid (on our assessment) and the purported legal arguments as to why the underpayments are allegedly 'lawful' at least as claimed by the parties making the payments.

In essence the argument seems to follow the following line

- The Award disallows and makes illegal the use of casual employees.
- Labour hire enterprise agreements have been negotiated, created and endorsed by the Fair Work Commission in which miners are employed as casuals.
- In creating/endorsing those agreements the argument has and is that any assessment under the Better Off Overall Test (BOOT) can ignore what a casual miner should have been paid had casual employment been allowed under the Award.

We find this argument to be illegitimate, spurious and in defiance of any normal practice, expectations and standards expected under the Fair Work Act and the principles and practices of industrial relations law. In our view it is plain and obvious that casual employees should at minimum be paid 25 percent more than what a full-time employee would earn.

We agree with the view of Senator Roberts that the underpayments are a 'scam.' Again, from Senator Roberts speech of 7 February 2024

"A quirk in the Black Coal Mining Industry Award makes the scam possible... This means that the enterprise agreements are paying much less than what should be paid under the award if it allowed casuals. Some paid casuals even less than the full-time award. Through technical, legal trickery all parties claim the agreements are 'legal.' Yet everyone knows a casual gets 25% loading on the hourly rate of a full-time worker. Paying them any less is, wage theft."

### **The role of the CFMEU in this perceived 'scam'**

Mr Irving, we understand you have been appointed administrator of the CFMEU because of extensive allegations of criminality within the CFMEU. Your role includes

- undertaking investigations into current and past practices of the CFMEU, including conduct of current and former officers, officials, delegates and employees
- complying with any obligations to cooperate with any inquiry into conduct of the CFMEU, or officers, employees or former officers or employees, being undertaken by any law enforcement agency or regulator (including us or the Commission).

The labour hire enterprise agreements that have enabled the underpayment of casual coal miners we have identified occurred with the active involvement of the CFMEU where the CFMEU either negotiated, oversaw, were aware of, approved, endorsed or were a party to the agreements. There is substantial documentary evidence of the CFMEU's active involvement in these enterprise agreements.

It is our reasonable concern that at minimum it is inconceivable that the Fair Work Commission would have endorsed these agreements had the CFMEU raised objections such that the agreements constituted underpayment of the casual coal miners and on any sensible, reasonable assessment failed the BOOT.

Further, it is our view and suspicion that the CFMEU must have been involved in collusive and even illegal behaviour to have allowed and even endorsed and supported such agreements.

### **Our request**

We request the following, for reasons of transparency and achieving the Objects and intention of the Fair Work Act and the Awards:

- A. That you avail yourself of the content, arguments and evidence contained in the One Nation Report on this matter specifically with a view to understanding the role of the CFMEU.
- B. Make yourself cognisant of the reviews being conducted by the Fair Work Ombudsman of the underpayment assessments we have lodged with the FWO.

- C. Investigate the historical activities of the CFMEU where the CFMEU either negotiated, oversaw, were aware of, approved, endorsed or were a party to the agreements.
- D. Investigate whether there was any collusive activity by the CFMEU, officers of the CFMEU or persons associated with the CFMEU such that they conspired with other persons or entities to have the underpayment of casual labour hire coal miners cause to occur.
- E. Given the alleged, extensive criminal activity within the CFMEU such to justify and cause your appointment as administrator, investigate whether any criminal activity such as bribes and other could have or was a feature of the CFMEU's involvement with the enterprise agreements and the resulting underpayment of casual coal miners.
- F. Given the extreme wealth of the CFMEU, investigate and consider whether as administrator you have at minimum a moral obligation to cause the CFMEU to financially contribute to compensation to affected coal miners who have been underpaid.

We appreciate your consideration of our request and look forward to returning correspondence including your approach to the above, within 21 days.

Kind Regards,

Ken Phillips  
Officer (Coal Miners)  
Independent Workers Union of Australia (Workers First Inc)  
0412 393 692

CC to: Senator Roberts, Minister Watts, Senator Cash