

Question on notice no. 115

Portfolio question number: EEC-BE21-115

2021-22 Budget estimates

Education and Employment Committee, Attorney-General's, including Industrial Relations matters Portfolio

Senator Louise Pratt: asked the Coal Mining Industry (Long Service Leave Funding) Corporation on 2 June 2021—

- (1. What is the gap between the wages of casual workers and full-time workers in the black coal mining industry?
2. Do you have any research that would back up assertions that casuals get an average of \$45 per hour and permanent workers get an average of \$75 per hour.
3. Doesn't this show that many casual workers aren't in fact getting the loading they're supposed to be paid in lieu of entitlements like paid leave?
4. Did the Coal LSL table any documents relevant to this issue as part of the Porter working group process?
5. Can the Coal LSL please provide any such documents to the committee.

Answer —

Please see answer and supporting document attached.



Australian Government

Coal Mining Industry
(Long Service Leave Funding) Corporation

COALLSL

The data on the following graphs is confidential and has been provided by the Coal Mining (Long Service Leave Funding) Corporation solely for internal use by the Working Party. It is not for public distribution outside this setting.

The information collected has been sourced from employers in the black coal mining industry who pay levies for eligible employees pursuant to the *Coal Mining Industry (Long Service Leave) Levy Act 1992* (Cth) and the *Coal Mining Industry Payroll Levy Collection Act 1992* (Cth). The data is based on levies that have been submitted for eligible hours worked by employees during each period.

Prior to 1 January 2010, an employer and its employees were covered by the Coal LSL Scheme through being a respondent to a relevant coal industry pre-modern award or through an enterprise agreement. Following legislative change in 2009 and 2011, the coverage provisions were wholly moved into the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cth) with (retrospective) effect from 1 January 2010 (and 1 January 2000 in certain circumstances). The coverage provisions expanded to businesses that provide outsourced services to the black coal mining industry.

The trends in the following charts reflect the legislative changes outlined above.

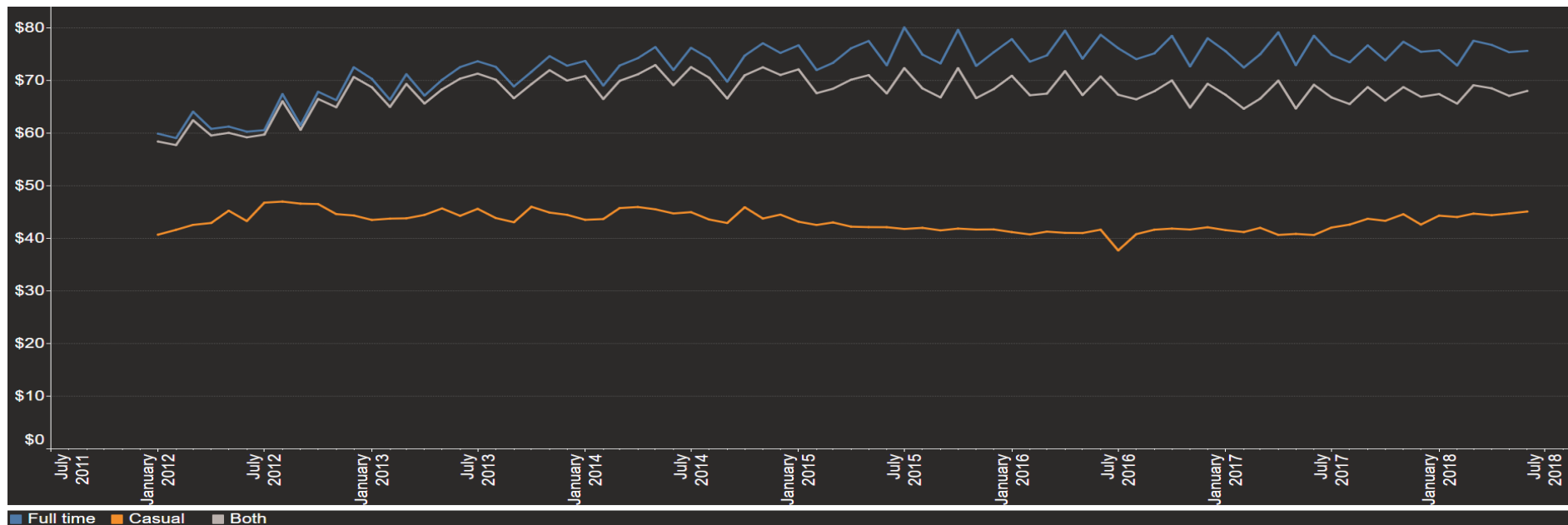
Wage rate by employment type

This graph covers a six-year period to July 2018 (data is not available beyond this). The wage rate is drawn from levies submitted by employers and is calculated as an average of eligible wages and hours worked.

The graph based on global figures shows a consistent gap between the wages of casual workers and full-time workers in the industry.

NOTE: The analysis does not account for the many factors that affect earnings (e.g. classification, workplace settings, age, location, human capital, experience etc). As such, this data should be interpreted with caution particularly when comparing earnings as it is not made on a like-for-like basis.

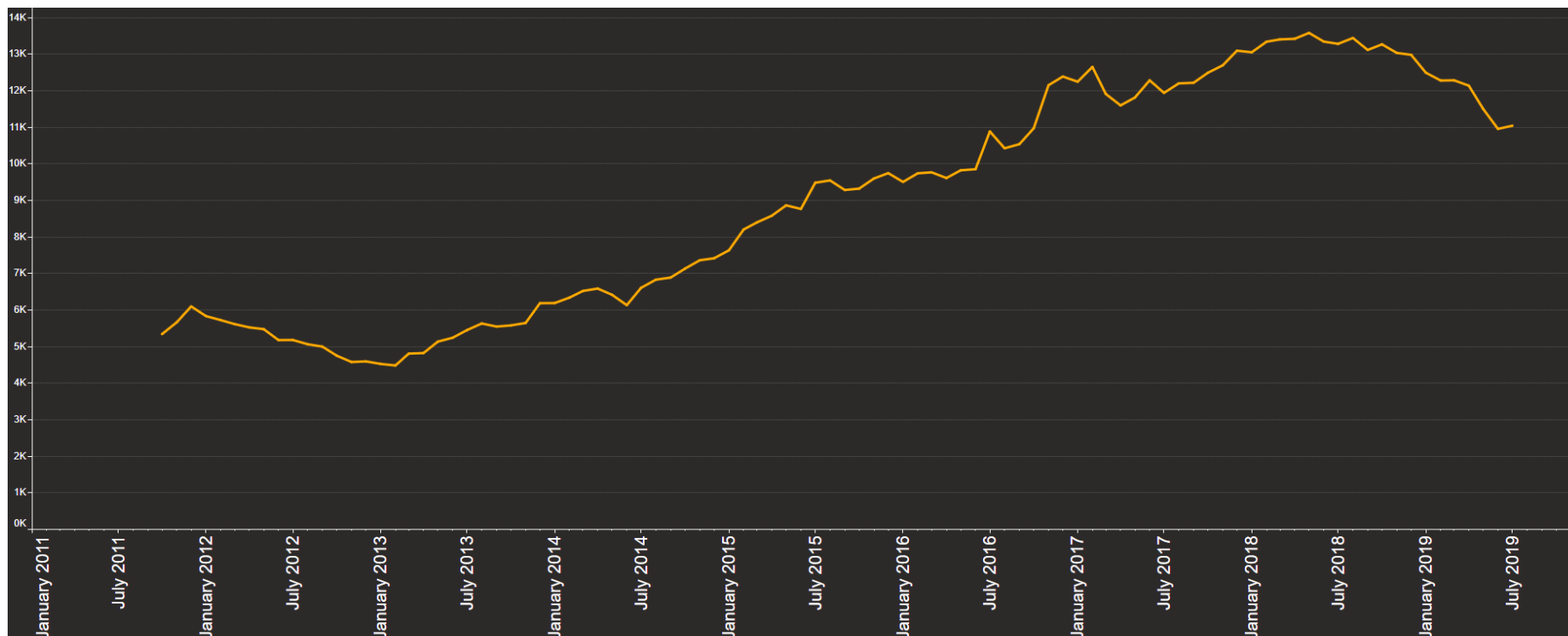
The graph shows a consistent gap between the wages of casual workers and full-time workers in the industry.



Number of unique periods of employment (lines of service)

This graph covers a seven-year period to July 2019 (last Annual Report period). The graph represents the number of unique periods of employment for casual employees each month. This is drawn from the eligible hours of casual employment reported via levy submissions in that period.

NOTE: the data should be interpreted with caution, particularly the need to take into account the effect of legislative change outlined above.



SENATE STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT

ATTORNEY-GENERAL'S PORTFOLIO

BUDGET ESTIMATES 2021 - 2022

PA-Coal Mining Industry (Long Service Leave Funding) Corporation

EEC-BE21-115 - Casuals in the black coal mining industry

Senator Louise Pratt asked the following question on 18 June 2021:

1. What is the gap between the wages of casual workers and full-time workers in the black coal mining industry?
2. Do you have any research that would back up assertions that casuals get an average of \$45 per hour and permanent workers get an average of \$75 per hour.
3. Doesn't this show that many casual workers aren't in fact getting the loading they're supposed to be paid in lieu of entitlements like paid leave?
4. Did the Coal LSL table any documents relevant to this issue as part of the Porter working group process?
5. Can the Coal LSL please provide any such documents to the committee.

The response to the honourable senator's question is as follows:

What is the gap between the wages of casual workers and full-time workers in the black coal mining industry?

Data (see Appendix 1) sourced from employers in the black coal mining industry who pay levies for eligible employees pursuant to the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (Cth) and the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (Cth), shows a consistent gap between the average wages of casual workers and full-time workers in the industry.

The data covers a six-year period to July 2018 and is based on levies that have been submitted for eligible hours worked by employees during each period.

Trends in the data reflect a change in the definition of an eligible employee of the scheme in 2010. Prior to 1 January 2010, an employer and its employees were covered by the Coal LSL Scheme through being a respondent to a relevant coal industry pre-modern award or through an enterprise agreement. Following legislative change in 2009 and 2011, the coverage provisions were wholly moved into the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cth) with (retrospective) effect from 1 January 2010 (and 1 January 2000 in certain circumstances). The coverage provisions were amended to reflect the change in employment practices in the industry to third-party labour contracts.

Note. The trends in the data reflect these legislative changes but the analysis does not account for the many factors that can affect earnings (e.g. classification, workplace settings, age, location, human capital, experience etc). As such, the data should be interpreted with caution, particularly when comparing earnings as it is not compiled on a like-for-like basis.

Do you have any research that would back up assertions that casuals get an average of \$45 per hour and permanent workers get an average of \$75 per hour?

See above.

Doesn't this show that many casual workers aren't in fact getting the loading they're supposed to be paid in lieu of entitlements like paid leave?

Coal LSL does not have visibility of the employment agreements of eligible employees of the Coal LSL Scheme. Employers report on hours worked and submit levies based on the calculation of eligible wages of their employees. Coal LSL cannot interpret the data collected to respond to the question of payment of loading in lieu of entitlements.

Eligible wages are calculated under Section 3B of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (Cth), as below:

3B Meaning of *eligible wages*

(1) If an eligible employee is paid a base rate of pay and is not a casual employee, the employee's ***eligible wages*** are the greater of:

- (a) the base rate of pay paid to the employee, including incentive-based payments and bonuses; and
- (b) 75% of the base rate of pay paid to the employee, including:
 - (i) incentive-based payments and bonuses; and
 - (ii) overtime or penalty rates; and
 - (iii) allowances (other than those for reimbursement of expenses).

(2) If an eligible employee is paid an annual salary, the employee's ***eligible wages*** are the annual salary paid to the employee, including incentive-based payments and bonuses but excluding:

- (a) overtime or penalty rates; and
- (b) shift-loadings.

(3) If an eligible employee is a casual employee, the employee's ***eligible wages*** are the base rate of pay paid to the employee, including incentive-based payments and bonuses.

(4) In this section:

- (a) a reference to the base rate of pay paid to an employee is a reference to the employee's base rate of pay before any amounts are deducted under a salary sacrifice arrangement; and
- (b) a reference to the annual salary paid to an employee is a reference to the employee's annual salary before any amounts are deducted under a salary sacrifice arrangement; and

- (c) a reference to an incentive-based payment paid to an employee is a reference to a payment of that kind that is paid to the employee at least once a month; and
- (d) a reference to a bonus paid to an employee is a reference to a bonus that is paid to the employee at least once a month.

‘Base rate of pay’ is defined under Section 16 of the *Fair Work Act 2009* (Cth), as below:

16 Meaning of *base rate of pay*

General meaning

- (1) The ***base rate of pay*** of a national system employee is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:
 - (a) incentive-based payments and bonuses;
 - (b) loadings;
 - (c) monetary allowances;
 - (d) overtime or penalty rates;
 - (e) any other separately identifiable amounts.

Meaning for pieceworkers in relation to entitlements under National Employment Standards

- (2) Despite subsection (1), if one of the following paragraphs applies to a national system employee who is a pieceworker, the employee’s ***base rate of pay***, in relation to entitlements under the National Employment Standards, is the base rate of pay referred to in that paragraph:
 - (a) a modern award applies to the employee and specifies the employee’s base rate of pay for the purposes of the National Employment Standards;
 - (b) an enterprise agreement applies to the employee and specifies the employee’s base rate of pay for the purposes of the National Employment Standards;
 - (c) the employee is an award/agreement free employee, and the regulations prescribe, or provide for the determination of, the employee’s base rate of pay for the purposes of the National Employment Standards.

Meaning for pieceworkers for the purpose of section 206

- (3) The regulations may prescribe, or provide for the determination of, the base rate of pay, for the purpose of section 206, of an employee who is a pieceworker. If the regulations do so, the employee’s ***base rate of pay***, for the purpose of that section, is as prescribed by, or determined in accordance with, the regulations.

Note: Section 206 deals with an employee’s base rate of pay under an enterprise agreement.

Did the Coal LSL table any documents relevant to this issue as part of the Porter working group process?

Yes. Coal LSL supplied the data discussed above for the working group process in August 2020.

Can the Coal LSL please provide any such documents to the committee.

See Appendix 1.



FACT SHEET

Why is it hard to get true data on casuals in mining?

Mining communities keep being told there aren't many casuals in mining. Employers have been claiming absurdly low percentages to claim that casualisation is not a problem in mining.

However, new data **kept secret** by the Federal Government shows the growth of casual work in mining and illustrates why employers embrace the model – they are cheaper.

There are three reasons why the estimates being shopped around by the employer lobbyists are wrong:

- 1 Labour hire companies are not included in official employment data on the mining industry, therefore the data doesn't capture casuals employed through labour hire – which is how most casuals are employed.
- 2 The survey sample used by the ABS in relation to the coal mining industry is so small that it is subject to fluctuation and a wide margin of error.
- 3 The dataset that gives the fullest picture of what is happening with casuals in the industry – produced by the Coal Mining Industry Long Service Leave Corporation - has been suppressed by the Federal Government.

Let's look at these issues more closely.

1. The big labour hire providers don't classify themselves as being in the mining industry

Under Australian Bureau of Statistics (ABS) classifications, labour hire companies fall under the 'Administrative and Services Support' industry. So all the casual coal miners working 12



hours shifts across the industry, doing the same jobs as permanents but with less pay and no leave entitlements for years on end? According to the official industry employment figures they're not mineworkers and are not counted.

The role of labour hire in the coal industry has grown dramatically as the proportion of workers directly employed by mine operators has fallen. As an indication, the recent Queensland Coal Board of Inquiry heard evidence that in 2017, just 45% of the Queensland open cut workforce and 48% of the underground workforce were directly employed. This compares with 65% in 2002 and 94% in 1996¹.

While specialist contractors may account for a small number of workers not directly employed by mine operators, the vast majority are coal mineworkers employed through labour hire companies – however their rates of casualisation are not being captured.

Check out some of the major labour hire suppliers to the coal industry:

Chandler Macleod has over 20,000 workers on 'client sites'. Its report to the Federal Government says 97% (more than 19 out of every 20) of its workforce are casual. But these casuals are not included in mining industry data.²

Workpac says it has more than 10,000 'field team members' on client sites, of whom more than 80% (or 4 in every 5 workers) are casual³. None are captured in mining industry figures. The WorkPac Coal Agreement 2019 covered 3673 employees and 3273 were casuals⁴.

One Key Resources has nearly 1,500 workers in the mining industry. Sixty five percent are casuals and none are classified under mining.⁵

2. ABS labour force data doesn't tell the full picture

The [Central Queensland Today](#) publication⁶, along with others, recently published data from the Australian Bureau of Statistics that states casuals in Queensland mining (mostly but not only coal) were just 11.3% of the workforce, or a little over 1 in 10 workers.

That the data from the ABS 'jumps around' should be a clue that it's unreliable – it varies from under 10% (1 in 10) to more than 25% (1 in 4 workers) in just 6 months.

The reason? The data comes from the *Labour Force Survey*, which is around 50,000 workers in 26,000 households. But that's out of a workforce of 13.9 million, when the coal mining

¹ Queensland Coal Mining Board of Inquiry, Report Part 2 May 2021

² Chandler Macleod website plus company report to the Workplace Gender Equality Agency for 2020

³ Workpac Report to WGEA 2020

⁴ Workpac Coal Mining Agreement 2019, [2019] FWCA 4505

⁵ One Key Resources Report to WGEA 2020

⁶ Central Queensland Today, 'Casuals a minority in mining' 30 July 2021



workforce is shown as 43,000 (a number that bounces around a lot too!). To reach that conclusion, the ABS interviewed approximately 138 workers who said they worked for a coal mining company.

3. There is coal industry specific data that backs us on casuals

The coal industry has a union-won portable long service leave scheme, and it covers everyone in the industry including casuals. It is accurate because all employers in the coal mining industry have to supply monthly returns that specifies the employment category of the employee and the rates of pay upon which they pay their long service leave levy.

This data was supplied to the Federal Government's IR working groups in 2020. However the Government has chosen not to release it, and instead back the misrepresentations of the business lobby. The document was only made public recently because of a Budget Estimates question on notice made by Labor Senator Louise Pratt.⁷

The data collected by the Coal Long Service Leave Corporation scheme shows over 30% of the whole coal workforce are casuals. It also shows that the hourly rate paid to casuals is about 40% less than that applying to permanent employees.⁸

It is likely that the rate of casualisation amongst the production and maintenance workforce on coal mines is much higher than 30%. This is because the data includes management, professional staff and administration, who comprise up to 40% of the workforce. These roles are much more likely to be employed as permanent employees directly by the mining company. The LSL figures suggest that casuals could be close to 50% of the production and maintenance workforce.

See the Coal LSL data:

<https://me.cfmeu.org.au/sites/me.cfmeu.org.au/files/CasualsData.pdf>

Casualisation of permanent jobs is a serious issue in the coal industry, which is having detrimental impacts on well-being of workers and the sustainability of regional communities.

The lack of transparent data on rates of casualisation and efforts by government and industry to suppress and mispresent the data that does exist undermines fair and effective policy-making.

⁷ Question on notice no. 115 Portfolio question number: EEC-BE21-115 2021-22 Budget estimates Education and Employment Committee, Attorney-General's, including Industrial Relations matters Portfolio

⁸ Coal Mining (Long Service Leave Funding) Corporation data provided to Attorney General's working groups on industrial relations, 2020

