

**FAIR WORK COMMISSION**

**Finalisation of Exposure Drafts – AM2019/17 AND AM2014/67**

**Black Coal Mining Industry Award 2010**

**Submissions in reply by the Coal Mining Industry Employer Group (CMIEG)**

1. These short submissions reply to the submissions of the CFMMEU dated [6 August 2020](#), in accordance with direction 2 of the Directions issued on 31 July 2020. References in these submissions to the CFMMEU submissions' paragraph numbers refer to the paragraph numbers of the CFMMEU 6 August 2020 submissions.
2. We note that the CFMMEU refers in paragraph [2] of its submission to the Commission's Exposure Draft of the Black Coal Mining Industry Award published on [26 September 2014](#). The CMIEG submissions of [24 July 2020](#) and [13 May 2020](#) are made with reference to the Exposure Draft award published on [29 January 2020](#).
3. In paragraph [3] the CFMMEU says that it "understands that the current process is principally one of interpretation of the relevant provisions of the BCMI Award..." (i.e. the Black Coal Mining Industry Award 2010). The CMIEG agrees generally with that submission but respectfully makes the following submissions in response. First, the Commission remains at all times obliged to ensure that the Award it makes satisfies the modern awards objective in section 134 of the *Fair Work Act 2009* (Cth). Second, where, as is the case in respect of the issues presently in contention, there are uncertainties and genuine differences of view based on the relevant terms of the BCMI Award and its predecessors and their history and context, the Commission will take into account the modern awards objective.
4. In paragraph [4] the CFMMEU submits that the matter concerns the interpretation of several clauses of the BCMI Award. It says that:

*"They are, in brief:*

- a. *whether shiftwork penalties are cumulative upon other penalties under the BCMI Award, in particular for the purposes of both weekend and public holiday penalties; and*
- b. *whether the reference to double and triple time payments for public holidays worked are references to the base rate of pay set out in the Award, or the employee's ordinary rate of pay."*

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5. The CMIEG submissions of 24 July 2020 (and previously 13 May 2020) distinguish clearly and deliberately between the provisions of the BCMI Award and its predecessors concerning these issues:
  - (a) **Weekend penalties:** The CMIEG submissions concerning shiftwork and weekend penalties are contained in paragraphs 4 to 18 of the CMIEG 24 July 2020 submission and paragraphs 3 to 8 of the CMIEG 13 May 2020 submissions.
  - (b) **Public holiday penalties:** The CMIEG submissions concerning shiftwork and public holiday penalties are contained in paragraphs 19 to 22 of the CMIEG 24 July 2020 submissions and paragraphs 9 to 14 of the CMIEG 13 May 2020 submissions.
6. In paragraph [5] of its submission the CFMMEU says that its submissions respond to the CMIEG 24 July 2020 submission at paragraphs [8] – [15] and [18]. Those paragraphs deal only with the issue of shiftwork and weekend penalties. It follows that the CFMMEU is not replying to the CMIEG 24 July 2020 submissions concerning shiftwork and public holiday penalties set out in paragraphs 19 to 22.
7. In paragraph [18] of its submission the CFMMEU refers to and relies on clauses 7 and 9 of the *Coal Mining Industry (Production and Engineering) Consolidated Award 1997*. Neither of those clauses, properly construed, assists the CFMMEU's submissions. Furthermore clause 9 was removed in 1998.

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