

14 December 2017

Associate to Justice Ross  
President  
Fair Work Commission  
4/11 Exhibition Street  
MELBOURNE VICTORIA 3000

**By Email:** amod@fwc.gov.au

Dear Associate,

**RE: AM2014/1 & Ors – 4 Yearly Review of Modern Awards – Statement of Justice Ross, 11 December 2017**

I refer to the above statement of Justice Ross, His Honour's provisional view on the commencement of the second 4 yearly review, and the invitation for interested parties to make submissions on the provisional view.

The Association of Professional Engineers, Scientists and Managers, Australia – Collieries Staff Division (**APESMA-CSD**) is the trade union with coverage of administrative, supervisory, and technical employees engaged at black coal mines around Australia.

By virtue of our coverage, APESMA-CSD has an interest in the *Black Coal Mining Industry Award 2010 (BCMIA)*. Like all other modern awards, the BCMIA is subject to the 4 yearly review of modern awards that commenced in February 2014.

APESMA-CSD has had the opportunity to read the 11 December 2017 statement of Justice Ross, and His Honour's provisional view outlined in paragraph [11] of that statement. In summary, APESMA-CSD agrees with the provisional view of the President that it is not practicable to commence the second 4 yearly review until the current review has been completed and the parties have been given an opportunity to see how the reviewed modern awards operate in practice.

The BCMIA serves as an example of why this provisional view is a sensible one. Since the commencement of the 4 yearly review in February 2014, the BCMIA has been subject to a significant amount of review in both common issues matters, and award specific matters.

Most notably, these reviews have significantly changed redundancy entitlements of employees engaged under the BCMIA (AM2014/47). The reviews have also expanded the coverage of the BCMIA to include mines rescue employees (AM2016/34), and the management of excessive leave (AM2014/47).

In addition to the reviews already completed, a number of reviews remain outstanding.

The most significant of these reviews concerns an application by the Coal Mining Industry Employer Group (**CMIEG**) to significantly reduce the amount of accident pay an employee will receive if they are injured at work (AM2014/190). The matter has been heard by a Full Bench of the Commission, and the parties are currently in the process of filing any additional submissions before the Full Bench hands down its decision.

In addition to the accident pay matter, the current version of the BCMIA lists some 12 matters as 'current review matters' affecting the award. These reviews are continuing, and the impact that these reviews will have on the BCMIA are not entirely clear.

As can be seen from the above examples, the impact of the current 4 yearly review on the BCMIA has not yet been realised, and indeed the award remains under review on a number of matters that will affect its operation. It is for these reasons that APESMA-CSD wholly supports the provisional view of Justice Ross outlined in His Honour's statement of 11 December 2017.

I trust that the above provides you with a sufficient understanding of APESMA-CSD's position on this matter. If however you have anything further you wish to discuss in relation to this matter, please contact me by return email, or on the below details.

Regards,



Adam Guy  
Legal Officer

**P:** (02) 9269 0688

**E:** [aguy@professionalsaustralia.org.au](mailto:aguy@professionalsaustralia.org.au)