

FAIR WORK COMMISSION
Four Yearly Review of Modern Awards

AM2014/67

**JOINT SUBMISSION ON BEHALF OF THE COAL MINING INDUSTRY EMPLOYER GROUP
AND THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION**

1. This submission is made jointly on behalf of the Coal Mining Industry Employer Group (**CMIEG**) and the Construction, Forestry, Mining and Energy Union (**CFMEU**).
2. The CMIEG and the CFMEU outline below their agreed position in relation to the terms of the Exposure Draft of the Black Coal Mining Award 2014 (**Exposure Draft**) and the questions posed in the Exposure Draft. The parties also intend to file separate submissions in relation to matters in the Exposure Draft on which they are not agreed.

Submissions on the terms of the Exposure Draft

3. The CMIEG and the CFMEU agree with and support the terms of the Exposure Draft subject to the following matters:

3.1 Inclusion of examples in the Exposure Draft

It is noted that no examples have been included in the Exposure Draft. Neither the CMIEG nor the CFMEU support the inclusion of examples.

3.2 Clause 3 - Coverage

The note appearing at the end of clause 3.5(c) refers to s143(7) of the *Fair Work Act 2009* (Cth) (**Act**) which describes classes of employees who are excluded from being covered by a modern award. No equivalent note appears in the existing *Black Coal Mining Industry Award 2010* (**Award**). Given that the note has no apparent operative purpose, the CMIEG and CFMEU submit that it should be removed.

3.3 Clause 8 – Ordinary Hours of Work: references to disputes

Clauses 8.4 and 8.5(a)(ii) contain the phrase "as determined in accordance with the procedure in clause 23- Dispute resolution", in contrast to clauses 8.2(c) and 8.3(b)(ii), which refer to disputes that are "resolved in accordance with clause 23 – Dispute resolution".

It appears that the terms "determined" and "resolved" are not intended to have different meanings. To ensure consistency, and avoid unnecessary confusion, the CMIEG and CFMEU submit that the term "resolved" be adopted throughout clause 8.

Accordingly, it is submitted that the word "resolved" replace the word "determined" in clauses 8.4 and 8.5(a)(ii).

3.4 **Clause 9.2 – Paid meal break – non-rostered overtime**

The Commission has invited parties to:

- (a) submit whether the break provided in clause 9.2(a) taken before starting overtime would be paid at the ordinary time rate or the overtime rate; and
- (b) consider whether the length of the crib break in clause 9.2(c) should be specified and also whether the terms 'crib time' and 'crib break' can be replaced with 'paid break' or 'paid meal break'.

The CMIEG and CFMEU agree that the intention of the clause is that the break in clause 9.2(a) is paid at the ordinary time rate if the break is taken during ordinary hours. If it is taken during overtime hours, then it is paid at the overtime rate.

In respect of clause 9.2(c), the CMIEG and CFMEU submit that it would be convenient to include in clause 9.2(c) the words "of 30 minutes duration" after the words "further crib break".

In relation to the appropriate terminology to be used, the terms "meal", "crib" and "crib break" are generally interchangeable terms in the coal industry. The CMIEG and CFMEU submit that use of the term "paid meal break" would be acceptable but the words "paid break" should not be used as the use of this term is not commonly understood and may be construed as meaning something different.

3.5 **Clause 13 – Penalty rates**

- (a) Clause 13.1 – table of rates

The CMIEG and the CFMEU suggest that for completeness, the table of rates in clause 13.1 also include a reference to the Day shift rate. This could be done by adding an additional row to the table of rates, so that the revised table appears as follows:

Shift	Penalty rate	Casual penalty rate (includes casual loading)
	% of minimum hourly rate	
Day shift	100%	125%
Afternoon and rotating night	115%	140%
Permanent night	125%	150%

(b) Clause 13.2 - Weekend work—other than shiftworkers

The Commission has invited parties to confirm whether the rates in the table in clause 13.2 apply to "other than shiftworkers".

The CMIEG and CFMEU confirm that this is the case.

(c) Clause 14.3 - Six day and seven day roster employees

The Commission has invited parties to confirm how clauses 14.3(a) and 14.3(b) interact with the rest of clause 14.

The CMIEG and CFMEU agree and submit that the provisions in clause 14.3 apply specifically to 6 and 7 day roster employees only. Any uncertainty over the relationship between the table in clause 14.2 and clause 14.3 can be eliminated by adding to clause 14.2(a) the words "and clause 14.3" after the words "Subject to the exceptions in clause 14.2(b)".

3.6 **Clause 14.7 (b)- Rest period after working overtime where the employee does not get a 10 minute rest**

The Commission has invited parties to submit whether "the end of the employee's ordinary hours of work" in 14.7(b)(i) should refer instead to "the end of the employee's overtime".

The CMIEG and CFMEU agree and submit that the current drafting of clause 14.7(b)(i) is correct and no change of this nature is required.

3.7 **Clause 16- Personal/carer's leave and compassionate leave**

It is noted that the Exposure Draft includes evidentiary requirements for the taking of compassionate leave (which has been done by adding references to compassionate leave to the terms used in the Award dealing with evidentiary requirements for personal/carer's leave).

The CMIEG and CFMEU submit that this change is appropriate. For completeness, it is proposed that the last sentence in clause 16.2 be amended to include the words "or compassionate leave" after the words "when taking paid/personal carer's leave".

3.8 **Clause 18.5 - Employee required to work on a recognised public holiday**

The Commission has invited parties to submit whether clause 18.5(a) means the employee is to be paid at the rate of 200% of the minimum hourly rate in addition to their ordinary rate, which includes shift payments and, if so, does this differ from clause 18.5(b)?

The CMIEG and CFMEU agree and submit that both these questions are to be answered in the affirmative.

3.9 Schedule A, Clause A.8 - Allowances

In the table in A8.2, the CMIEG and CFMEU submit that more clarity could be achieved if the reference to "standard rate" in the heading in the third column was replaced by the words "% of Mineworker – Induction Level 2".

3.10 Schedule B, Clause B.3 - Allowances

In the table in B3.1, the CMIEG and CFMEU submit that more clarity could be achieved if the reference to "standard rate" in the heading in the third column was replaced by the words "% of Mineworker – Induction Level 2".

3.11 Schedule C – Summary Hourly Rates of Pay

The CMIEG and the CFMEU do not consider that it is necessary to include summary tables of hourly rates of pay, including penalties and loadings.

3.12 Schedule D – National Training Wage

(a) Clause D.3 - Coverage

The Commission has invited parties to identify "any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997" that they consider should not be covered by this Schedule.

The CMIEG and CFMEU have not been able to consider this issue in any detail at this stage. It is submitted that this matter should be the subject of consideration by an appropriate training authority with access to the necessary information regarding training programs.

(b) Clause D.5.2 – Calculating the actual minimum wage

The CMIEG and the CFMEU have briefly discussed an issue concerning this clause, in light of concerns expressed by the CFMEU that the clause does not reflect the current provisions and is wrong.

The parties require some additional time to discuss and reach a position in this matter and to inform the Commission of that position. It is also understood that the issue raised by the CFMEU is being raised more broadly elsewhere within the modern award process.

(c) Clause D.7 – Allocation of traineeships to wage levels

The CMIEG and CFMEU have not had an opportunity to review the packages listed to ensure the lists are complete and up to date.

3.13 **Schedule F, clause F.1 –Definitions**

(a) Ordinary hours

The Commission has invited parties to confirm how the definition of "ordinary hours" interacts with clause 8 – Ordinary hours of work and rostering.

The CMIEG and CFMEU note that "ordinary hours of work" is already defined, in effect, in clause 8.1. Rather than include a separate definition which differs from clause 8.1, thereby introducing the prospect for confusion, it is submitted that the appropriate approach would be to have a definition which either adopts the definition in clause 8.1, or refers to it. A suggested definition is set out below:

Ordinary hours has the meaning provided for in clause 8.1.

(b) Ordinary week's pay

The Commission has invited parties to comment on what the term "total payment column" refers to in this definition.

The CMIEG and CFMEU submit that the term "total payment column" is intended to refer to the basic weekly 35 hour rate in the table of minimum rates in Schedule A, clause A.4 of the Award. It is noted that the ongoing use of this term lacks clarity. The following alternate wording is proposed:

Ordinary week's pay means the amount in the minimum week rate column for the award classification in respect of 35 ordinary hours.

Other matters

4. It is noted that the following provisions are being reviewed as common issues, or are otherwise the subject of other proceedings as part of the Four Yearly Modern Award Review process and may therefore be the subject of separate submissions by the CMIEG and CFMEU:
 - (a) Removal of accident pay / transitional provision references;
 - (b) Clause 4 – award flexibility;
 - (c) Clause 15 – annual leave;
 - (d) Clause 16.3 – entitlement to personal/carer's leave;
 - (e) Clause 18.4(b) – Employee not required to work on a public holiday. It is noted in this respect that the CMIEG and CFMEU's agreed position is that clause 18.4(b) should be deleted.

5. Similarly, clause 21.4 – Retrenchment Payment is a matter on which the CMIEG and CFMEU differ. The parties propose to make separate submissions in respect of this issue.

6. The CMIEG and CFMEU welcome the opportunity to make oral submissions to supplement these written submissions.

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**Construction, Forestry,
Mining and Energy Union**

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