



51 Walker Street
North Sydney NSW 2060
PO Box 289
North Sydney NSW 2059
Australia

ABN 76 369 958 788

Tel: 02 9466 5566
Fax: 02 9466 5599
www.aigroup.com.au

13 November 2015

The Hon. Justice Ross, President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

Dear Justice Ross,

Re. AM2014/67 Black Coal Mining Industry Award 2010

We refer to the above matter and the Commission's decision of 23 October 2015 ([2015] FWCFB 7236). At paragraph [13] of that decision, the Full Bench listed certain unresolved issues in respect of the *Black Coal Mining Industry Award 2010* (Black Coal Award). Parties were directed to identify any issues there listed that will be pursued and the grounds in support of any consequential variation proposed.

One of the matters listed at paragraph [13] is clause 18.5 of the *Exposure Draft – Black Coal Mining Industry Award 2014* (Exposure Draft); the appropriate payment for time worked on a public holiday. That provision has been renumbered as clause 18.4 in the 4 November 2015 version of the Exposure Draft. The Exposure Draft contains a question that goes to the calculation of the public holiday rate.

In response to the question contained in the Exposure Draft, and following discussions between interested parties during a conference before Senior Deputy President Hamberger on 11 December 2014, the Australian Industry Group (Ai Group) seeks that clause 18.4 in the Exposure Draft be amended as follows:

18.4 Employee required to work on a recognised public holiday

(a) An employee who is required to work on a public holiday is to be paid at the rate of ~~double time~~ 200% of the relevant minimum hourly rate prescribed by clauses A.4 and B.2 for work performed during ordinary hours, in addition to any amount payable in respect of the relevant minimum weekly rate ~~payment~~ prescribed by clauses A.4 and B.2.

(b) Work performed in excess of ordinary hours on a public holiday is to be paid at the rate of 300% of the relevant minimum hourly rate prescribed by clauses A.4 and B.2 ~~treble time~~.

(c) The rates prescribed by this clause are paid in substitution for, and are not cumulative upon, the penalty rates in clause 13 and the overtime rates in clause 14 of this award.

The amendment is sought on the following bases:

- Clause 27.4(a) of the Black Coal Award does not properly reflect clause 37.4.1 of the *The Coal Mining Industry (Production and Engineering) Consolidated Award 1997* and clause 33.4.1 of the *Coal Mining Industry (Staff) Award, 2004*. This error subsists at clause 18.4 of the Exposure Draft.
- Further, clause 18.4 should reflect the Commission's decision that penalty rates stipulated by a modern award are referable to the minimum rates prescribed by the award and do not apply to over-award payments ([2015] FWCFB 4658 at [95] – [96]).
- As a result, clause 18.4(a) does not make clear that the relevant penalty rate is to be applied to the minimum hourly rate prescribed by the award (in substitution for any shift premiums, overtime rates and weekend penalties) for each ordinary hour worked on a public holiday, in addition to the minimum weekly rate to be paid pursuant to the award.
- Further, clause 18.4(b) does not make clear that the relevant penalty rate is to be applied to the minimum hourly rate prescribed by the award (in substitution for any shift premiums, overtime rates and weekend penalties).

We also note that clause 18.4(b) of the Exposure Draft should not be deleted. This issue appears to be a drafting error that has arisen in the revised Exposure Draft of 4 November 2015.

Ai Group respectfully requests that we be granted an opportunity to file written submissions in respect of our proposed amendment to the Exposure Draft. Once any material in response has been filed, we propose that parties be given an opportunity to assess and advise the Commission as to whether the matter could be dealt with on the papers.

Yours sincerely,



Stephen Smith
Head of National Workplace Relations Policy