

FAIR WORK COMMISSION

FOUR YEARLY REVIEW OF MODERN AWARDS

AM2014/79 – MINING INDUSTRY AWARD 2010

SUBMISSION BY THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION,  
MINING AND ENERGY DIVISION ("CFMEU")

EXPOSURE DRAFT – REPUBLISHED 2 NOVEMBER 2015

1. In submissions on the first exposure draft of the Mining Industry Award, dated 20 October 2014 and 6 November 2014, the CFMEU raised a concern about the use of the term "entitlements" to replace the term "attributes" in sub clause 6.4(e) of the exposure draft. The term "attributes" can be found in the current Mining Industry Award 2010 at sub clause 10.3(c). The term appears in the context of what the casual loading is paid in lieu thereof.
2. As we reflect upon and reconsider our original submissions on this point, our concern is that the term "entitlements" could be read more widely than "attributes" and may lead to attempts to inadvertently deny casual employees award entitlements they have always received e.g. shift penalties. As we read it, that is not the intention or substance of the change of wording. Having given further consideration to the issue, it is our view that it would be desirable to leave the current award term in its current form so as to avoid any potential and unnecessary confusion.
3. It is acknowledged that this issue was not mentioned in the Report to the Full Bench in December 2014. It is our recollection that the view was that the matter would be dealt with under the casual employment common issues matter. However that turned out not to be the case.
4. In the casual employment common issues matter the CFMEU filed a submission on other awards and in doing so made reference to the Mining Industry Award. A copy of that submission is attached.
5. As we made a submission to the casual employment common issues matter Full Bench and mentioned the Mining Industry Award, we saw it as incumbent on us to raise it with this Full Bench. It will be noted that in

the attached submission, at paragraph 7, we submit that we would seek that the current wording in the Mining Industry Award remain unchanged.

6. Accordingly consistent with what we stated to the casual employment Full Bench and to avoid any potential confusion about what the casual loading is paid in lieu thereof, we seek that the term “attributes” as can be found in the current award remain in place in any “reviewed” Mining Industry Award. It follows that with the exception of the words “in clause 6.4 (c) (i)” the sub clause would remain unchanged from the current award.

CFMEU Mining and Energy Division  
20 November 2015

**FAIR WORK COMMISSION**

**FOUR YEARLY REVIEW OF MODERN AWARD**

**AM2014/197 – CASUAL EMPLOYMENT**

**ELECTRICAL POWER INDUSTRY AWARD**

**COAL EXPORT TERMINALS AWARD**

**SUBMISSION BY THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION, MINING AND ENERGY DIVISION (CFMEU M & E)**

1. In its list of issues relating to casual employment that have been referred to a Full Bench in AM2014/197, the Fair Work Commission (FWC) mentions an issue raised by the CFMEU M & E regarding casual employment in the Electrical Power Industry Award and the Coal Export Terminals Award<sup>1</sup>.
2. In our submissions to the FWC relating to the broader award modernisation process as it applies to these two awards, the CFMEU raised an issue regarding the term “other attributes of full time and part time employment” in the context of the casual loading. The relevant sub clauses are sub clause 13.5 of the Electrical Power Industry Award and sub clause 10.3(c) of the Coal Export Terminals Award.
3. The submissions also made reference to the Mining Industry Award where the Exposure Draft had amended the word “attributes” in the term, “other attributes of full time and part time employment” to “other entitlements of full time and part time employment”. In our submission to the FWC on the Mining Industry Award, we raised concern about that change as it appeared in the Exposure Draft. In that submission it was proposed that the whole term be either deleted or that no change be made to the current wording in the award.
4. Whilst there isn’t an Exposure Draft for either the Electrical Power Industry Award or the Coal Export Terminals Award and hence no proposed change, we thought it advisable to raise the issue in advance as the same term appears in those awards.
5. The CFMEU M &E has given further consideration to the issues raised in our submissions on those awards and as a consequence has adopted the position that as a result of the modern award process the wording in sub clause 13.5 of the Electrical Power Industry Award and sub clause 10.3(c) of the Coal Export Terminals Award should remain as it is in the current

---

<sup>1</sup> See Items 35 and 36 of ISSUES RELATING TO CASUAL EMPLOYMENT – REFERRED TO FULL BENCH, attached to a Notice of Listing dated 27 May 2015

awards. In our submission, the current wording, which was inserted in the awards when they were made, is satisfactory.

6. For that reason the CFMEU M & E has not seen any need to file any draft Determination.
7. Whilst the Mining Industry Award is not before this Full Bench, our position is the same with that award as with the other two awards, namely that the wording in the current sub clause remains unchanged as a result of the modern award review process.

Construction, Forestry, Mining and Energy Union  
Mining and Energy Division  
12 October 2015