

IN THE FAIR WORK COMMISSION

Matter No: AM2020/25

Four Yearly Review of Modern Awards –Finalisation of Exposure Drafts and variation determinations – Tranche 3 awards – *Black Coal Mining Industry Award*

REPORT OF THE AUSTRALIAN INDUSTRY GROUP

14 June 2021

1. This report is made to outline the positions reached by parties regarding variations to the exposure draft of the *Black Coal Mining Industry Award 2020* to implement the conclusions reached by the Fair Work Commission in its decisions on 18 November 2020 (**November Decision**) and 4 May 2021 (**May Decision**).¹
2. The Australian Industry Group (**Ai Group**) and the Coal Mining Industry Employer Group (**CMIEG**) – collectively referred to as the Employers - have agreed on variations which reflect the outcome of the Overtime for Casuals Decision, the November Decision and the May Decision.
3. The Employers' proposed variations have been circulated to the Construction, Forestry, Maritime, Mining and Energy Union – Mining and Energy Division (**CFMMEU**), the Australian Manufacturing Workers' Union (**AMWU**), Professionals Australia and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Services Union of Australia (**CEPU**) – collectively referred to as the **Union Parties**.
4. Pursuant to the Conference which took place via telephone on 30 June 2021, the Union Parties updated the employers' proposed variations to accommodate their interpretation of the November Decision and the May Decision.
5. Annexed to this report are the proposed variations as amended by the Union Parties. The Employers do not accept all the proposed variations as amended. Where relevant, sections which remain in dispute are highlighted with commentary.
6. The Employer Parties note that additional variations to the exposure draft may be necessary to implement the Full Bench's 18 August 2020 and 30 October 2020 Decisions in the 'overtime for casuals' common issue.²

Ai GROUP

14 July 2021

¹ [2020] FWCFB 5908, [2021] FWCFB 2023.

² [2020] FWCFB 4350, [2020] FWCFB 5636.

On the basis of the Decisions issued by the Fair Work Commission on 18 August 2020, 18 November 2020 and 4 May 2021 and subsequent discussions between the parties, the following variations are proposed by the Employers to the exposure draft of the Black Coal Mining Industry Award 2020

2. Definitions

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casual minimum hourly rate means the minimum hourly rate for a casual employee for the employee's classification specified in Schedule B, inclusive of the 25% casual loading set out at clause 11.3(a).

11. Casual employees

...

11.3 Casual loading

(a) For each ordinary hour worked, a casual employee must be paid:

- i. the minimum hourly rate; and
- ii. a loading of 25% of the minimum hourly rate,

for the classification in which they are employed. This rate (inclusive of the 25% loading) is the casual minimum hourly rate.

Employer Comments: In paragraph [24] of the [4 May Decision](#), the Commission expressed the provisional view that the column dealing with casual penalties in clauses 23.1 and 23.2 be deleted. In order to implement this change, a reference rate may be inserted in the award titled the 'casual minimum hourly rate'. This is made up of the 'minimum hourly rate' and the 25% casual loading.

Union Parties Comments:
Agreed.

23. Penalty rates

23.1 An employee will be paid the following rates for all ordinary hours worked during the following periods

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

23.2 Weekend work

An employee will be paid the following rates for all ordinary hours worked on the following days:

Day	Period	Penalty rate	Casual penalty rate (includes casual loading)
		% of minimum hourly rate	
Saturday	First 4 hours	150%	175%
	After first 4 hours	200%	225%
Sunday	All hours	200%	225%

23. Penalty Rates and Weekend Work

23.1 An employee will be paid the following **additional penalties** for all ordinary hours worked during the following periods.

Day	Period	Additional Penalty
		% of minimum hourly rate
Monday to Friday Day work / Day shift		0%
Monday to Friday Afternoon Shift / Rotating Night Shift		15%
Monday to Friday Permanent Night Shift		25%
Saturday Day work / Day shift	First 4 hours	50%
	After 4 hours	100%
Saturday Afternoon Shift / Rotating Night Shift	First 4 hours	72.5%
	After 4 hours	130%
Saturday Permanent Night Shift	First 4 hours	87.5%
	After 4 hours	150%

Sunday Day work / Day shift		100%
Sunday Afternoon Shift / Rotating Night Shift		130%
Sunday Permanent Night Shift		150%

Note - Where clause 23.1 refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable.

Employer Comments: The proposed variations to clause 23 have been updated to accommodate the conclusions of the Full Bench regarding the interaction between the casual loading and the weekend and shift penalties in paragraphs [20] and [21] of the [4 May Decision](#)

Union Parties Comments:
Agreed

29.3 Employee not required to work on a public holiday

An employee who is not required to work on a public holiday which would otherwise have been a working day for that employee will be paid for that day at the employee's classification rate.

29.4 Employee required to work on a recognised public holiday

- (a) Subject to paragraph (c), an ~~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 Schedules A – Production and Engineering Employees and B – Staff Employees for work performed during ordinary hours, in addition to the payment prescribed by clause 29.3.
- (b) Subject to paragraph (c), work ~~Work~~ performed in excess of ordinary hours on a public holiday is to be paid at the rate of ~~treble time~~ 300% of the relevant minimum hourly rate prescribed by Schedules A – Production and Engineering Employees and B – Staff Employees.
- (c) In addition to the amounts paid in subparagraphs (a) and (b) above, an employee will be paid the following additional shift penalties for working on a public holiday

Type of Shift	Additional Penalty
	% of minimum hourly rate
Ordinary Hours Afternoon Shift / Rotating Night Shift	30%
Ordinary Hours Permanent Night Shift	50%
Overtime hours for 6 or 7 day roster employee Afternoon Shift/ Rotating Night Shift	30%
Overtime hours for 6 or 7 day roster employee Permanent Night Shift	50%

Note 1 - Where clause 23.1 refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable.

Note 2 – See also Schedules C.1.2, D.1.2, D.2.2, D.2.4, C.1.4 and D.1.4.

29.5 Notice of public holidays to be worked (other than employees working shifts of up to 8.5 ordinary hours)

- (a) On a date agreed, the employer will nominate which public holidays will be worked in the following 12 months by employees (other than employees working shifts of up to 8.5 ordinary hours on weekdays), provided that work will not be carried out on 2 of such public holidays.
- (b) If the employer does not require employees to work on a public holiday (as nominated in clause 1.1(a)) the employer must give the employees as much notice as possible of this decision.
- (c) If the notice required by clause 1.1(b) is less than 4 weeks inclusive of the public holiday, an employee who was rostered to work on the public holiday is to be paid for ordinary hours as if the public holiday had been worked.

Employer Comments: Proposed variations to clauses 29.3, 29.4 and 29.5 broadly reflect the Full Bench's conclusion in [99] – [104], [110] and [116] of the 18 November 2020 Decision.

Union Parties Comments:
Agreed.

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C.1.2 Full-time and part-time production and engineering employees – shiftwork

Day Shift	Afternoon Shift	Rotating night shift	Permanent night shift	Saturday (Afternoon and Rotating Night Shift)		Sunday (Afternoon and Rotating Night Shift)	Saturday (Permanent Night Shift)		Sunday (Permanent Night Shift)	Public Holiday		
				First 4 hours	After 4 hours		First 4 hours	After 4 hours		Afternoon and Rotating Night Shift	Permanent Night Shift	
% of minimum hourly rate												
100%	115%	115%	125%	172.5 %	230 %	230%	187.5 %	250 %	250%	330%	350%	

D.1.2 Full-time and part-time staff employees—shiftwork

Day Shift	Afternoon Shift	Rotating night shift	Permanent night shift	Saturday (Afternoon and Rotating Night Shift)		Sunday (Afternoon and Rotating Night Shift)	Saturday (Permanent Night Shift)		Sunday (Permanent Night Shift)	Public Holiday		
				First 4 hours	After 4 hours		First 4 hours	After 4 hours		Afternoon and Rotating Night Shift	Permanent Night Shift	
% of minimum hourly rate												
100 %	115%	115%	125%	172.5 %	230 %	230%	187.5 %	250 %	250%	330%	350%	

Employer Comments: Proposed variations to clauses C.1.2 and D.1.2 are intended to reflect the Full Bench's conclusion in [55] of the 18 November 2020 Decision.

Union Parties Comments:
Agreed.

D.2.1 Casual staff employees – ordinary and penalty rates

	Ordinary hours	Saturday		Sunday	Public holiday
		First 4 hours	After 4 hours		
% of casual minimum hourly rate					
	100%	150%	200%	200%	300%
Classification	\$	\$	\$	\$	\$
Group A					
Group B					
(etc)					

Employer Comments: This clause is amended to reflect the Full Bench’s conclusions in paragraphs [17] and [18] of its May Decision ([2021] FWCFB 2023).

Union Parties Comments: Agreed.

D.2.2 Casual staff employees—shiftwork

Day Shift	Afternoon Shift	Rotating night shift	Permanent night shift	Saturday (Afternoon and Rotating Night Shift)		Sunday (Afternoon and Rotating Night Shift)	Saturday (Permanent Night Shift)		Sunday (Permanent Night Shift)	Public Holiday	
				First 4 hours	After 4 hours		First 4 hours	After 4 hours		Afternoon and Rotating Night Shift	Permanent Night Shift
% of casual minimum hourly rate											
100%	115%	115%	125%	172.5%	230%	230%	187.5%	250%	250%	330%	350%

Employer Comments: Proposed variations to clause D.2.2 are intended reflect the Full Bench’s conclusion in [55] of the 18 November 2020 Decision as modified by paragraphs [20] and [21] of the [4 May Decision](#).

Union Parties Comments:
Agreed.

D.2.3 Casual staff employees other than 6 day roster and 7 day roster employees – overtime rates

	Monday to Saturday		Sunday	Public holiday
	First 3 hours	After 3 hours		
% of casual minimum hourly rate				
	150%	200%	200%	300%
Classification	\$	\$	\$	\$
Group A				
Group B				
(etc)				

Employer Comments: This is a new clause inserted to reflect the outcome of the Commission’s decision in paragraphs [17] and [18] of its May Decision ([2021] FWCFB 2023).

Union Parties Comments: Agreed

D.2.4 Casual staff employees – 6 day roster and 7 day roster employees – overtime rates

	Afternoon and rotating night shift			Permanent night shift			Public Holiday			All other overtime		
	Monday to Friday	Saturday		Sunday	Monday to Friday	Saturday		Sunday	Day Shift		Afternoon and Rotating Night Shift	Permanent Night Shift
		First 4 Hours	After 4 Hours			First 4 Hours	After 4 Hours					
% of casual minimum hourly rate												
	215%	222.5%	230%	230%	225%	237.5%	250%	250%	300%	330%	350%	200%
Classification	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Group A												
Group B												
Group C												
Etc.												

NOTE: Where an employee works a combination of ordinary hours and overtime hours on a Saturday, all hours worked will be counted towards determining whether an employee has worked in excess of 4 hours pursuant to clause 23.1.

Employer Comments: This is a new clause inserted to reflect the outcome of the Commission’s decision in paragraphs [17] and [18] of its May Decision ([2021] FWCFB 2023). The title of the final column is also intended to reflect the Full Bench’s conclusion in [63] of the 18 November 2020 Decision.

Union Parties Comments:
Agreed.

C.1.3 Full-time and part-time production and engineering employees other than 6 day roster and 7 day roster employees—overtime rates

	Monday to Saturday		Sunday	Public holiday
	First 3 hours	After 3 hours		
	% of minimum hourly rate			
	150%	200%	200%	300%
	\$	\$	\$	\$

...

Note: These rates do not apply to employees referred to in cl. 21.2(b)(ii) and 21.2(b)(iii). For such employees, all overtime will be paid for at the rate of 200% of the minimum hourly rate, or where the overtime is worked on a public holiday, at the rate of 300% of the minimum hourly rate.

%

D.1.3 Full-time and part-time staff employees other than 6 day roster and 7 day roster employees—overtime rates

	Monday to Saturday		Sunday	Public holiday
	First 3 hours	After 3 hours		
	% of minimum hourly rate			
	150%	200%	200%	300%

...

Note: These rates do not apply to employees referred to in cl. 21.2(b)(ii) and 21.2(b)(iii). For such employees, all overtime will be paid for at the rate of 200% of the minimum hourly rate, or where the overtime is worked on a public holiday, at the rate of 300% of the minimum hourly rate.

%

Clause 21.2

(a) ...

(b) All time worked in excess of or outside the ordinary hours of any shift by employees:

- (i) who are six day roster employees or seven day roster employees; or
- (ii) **regular weekend workers**, meaning employees:
 - a. who work a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays; or
 - b. who work a roster which requires ordinary shifts on Saturday and Sunday where the majority of the rostered hours on the Saturday or Sunday shifts fall between midnight Friday and midnight Sunday;

C.1.5 Weekend workers (pursuant to clause 21.2(b)) – Overtime Rates

	% of minimum hourly rate
Overtime worked on a Public Holiday	300%
All other overtime	200%

Employer Comments: This proposed variation seeks to address the issue raised by the CFMMEU at paragraphs [23] – [25] of its [20 April 2020 submission](#).

Union Parties Comments:

Agreed.

C.1.4 Full-time and part-time production and engineering employees—6 day roster and 7 day roster employees—overtime

	Afternoon and rotating night shift			Permanent night shift			Public Holiday			All other overtime		
	Monday to Friday	Saturday		Sunday	Monday to Friday	Saturday		Sunday	Day Shift		Afternoon and Rotating Night Shift	Permanent Night Shift
		First 4 Hours	After 4 Hours			First 4 Hours	After 4 Hours					
% of casual minimum hourly rate												
	215%	222.5%	230%	230%	225%	237.5%	250%	250%	300%	330%	350%	200%
Classification	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Group A												
Group B												
Group C												
Etc.												

NOTE: Where an employee works a combination of ordinary hours and overtime hours on a Saturday, all hours worked will be counted towards determining whether an employee has worked in excess of 4 hours pursuant to clause 23.1.

D.1.4 Full-time and part-time staff employees—6 day roster and 7 day roster employees—overtime

	Afternoon and rotating night shift			Permanent night shift			Public Holiday			All other overtime		
	Monday to Friday	Saturday		Sunday	Monday to Friday	Saturday		Sunday	Day Shift		Afternoon and Rotating Night Shift	Permanent Night Shift
		First 4 Hours	After 4 Hours			First 4 Hours	After 4 Hours					
% of casual minimum hourly rate												
	215%	222.5%	230%	230%	225%	237.5%	250%	250%	300%	330%	350%	200%
Classification	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Group A												
Group B												
Group C												
Etc.												

NOTE: Where an employee works a combination of ordinary hours and overtime hours on a Saturday, all hours worked will be counted towards determining whether an employee has worked in excess of 4 hours pursuant to clause 23.1.

Employer Comments: This proposed variations to clauses C.1.4 and D.1.4 are intended to reflect the Full Bench's conclusion in [63] of the 18 November 2020 Decision.

Union Parties Comments:

Agreed.