



REPORT

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—*Black Coal Mining Industry Award 2010* (AM2019/17)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 23 MARCH 2020

[1] On 12 March 2020, the Finalisation Full Bench published a Statement¹ concerning the finalisation of the Exposure Draft and variation determination in respect of the Black Coal Mining Industry Award 2020 (the Black Coal Award).

[2] A conference in respect of the issues raised was held on Friday 20 March 2020. The transcript of the conference is available to be viewed [here](#).

[3] The conference was attended by:

- Mr R Coluccio, Professionals Australia;
- Mr H Harrington, Australian Industry Group;
- Ms Y Abousleiman, Electrical Trades Union of Australia;
- Ms E Sarlos, Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division;
- Ms A Devasia, Australian Manufacturing Workers' Union; and
- Mr A Morris, Coal Mining Industry Employer Group.

[4] This report sets out the outcomes of the conference.

[5] The matters that were **agreed** are:

1. The correction of the following errors in the Exposure Draft:

- the reference to '20XX' should be replaced with '2020' in the title of the award, the header and clause 1.1'
- the reference to clause 14 in clause 7.2(a) (the index to facilitative provisions) should be deleted and replaced with a reference to clause 15;
- in clause 17.4, each time '20XX' appears it should be replaced with '2020';

¹ [\[2020\] FWCFB 1297](#).

- in clause 24.9(a), 24.9(i) and 24.10, the reference to clause 24.4 should be replaced with a reference to clause 24.10;
 - in clause A.1.5 Note, the reference to clause 31 should be deleted, consistent with the note following the extant A.1.5;
 - in clause A.8.2 Wage related allowances and reimbursements – height money, the final column should be amended to reflect the fact that height money is payable per shift, not per hour.
2. The definition of the ‘black coal mining industry’ in clause 2 will be amended as follows:

‘**black coal mining industry** has the meaning given in clause 4.2 and **clause 4.3**’

3. The definition of ‘ordinary week’s pay’ in clause 2 will be amended as follows:
- ‘**ordinary week’s pay** means **the** minimum weekly wage rate in the tables of minimum rates in ~~clauses Schedules A.4 and B.2~~ for the award classification rate in respect of 35 ordinary hours.’
4. Clause 25.1 – Personal carers leave and compassionate leave:

The following explanatory words be inserted into clause 25.1 of the Exposure Draft:

‘Personal/carer’s leave entitlements are provided for in the NES. This clause supplements those entitlements and deals with evidence required to be provided by an employee when taking paid personal/carer’s leave.’

5. Clause 21.3 – Six day and seven day roster employees.

Variations to clauses 21.3(a) and (b) will be made as follows:

21.3 Six day and seven day roster employees

(a) All time worked in excess of or outside ordinary hours ~~after~~**of** an afternoon shift or a rotating night shift by a 6 day roster employee or a 7 day roster employee will be paid at 215% of the employee’s ordinary base hourly rate of pay.

(b) All time worked in excess of or outside ordinary hours ~~after~~**of** a permanent night shift by a 6 day roster employee or a 7 day roster employee will be paid at 225% of the employee’s ordinary base hourly rate of pay.

[6] Two issues remain outstanding.

Issue 1: Shiftwork rates Schedules C and D

[7] The CFMMEU (M&E) submits that the rates in clauses C.1.2, D.1.2 and D.2.2 should be amended, as follows:

- (i) for the first 4 hours on a Saturday: 165% for an afternoon and rotating night shift and 175% for hours worked on a permanent night shift; and

- (ii) on a Saturday *after* the first 4 hours: 215% for an afternoon and rotating night shift and 225% for hours worked on a permanent night shift.

[8] CFMMEU (M&E) proposal is supported by the other unions and opposed by Ai Group and the Coal Mining Industry Employer Group.

Issue 2: Clause 29.4 Employee required to work on a recognised public holiday

[9] Ai Group is pressing a claim in relation to clause 29.4 (clause 18.4 of the Exposure Draft at that time).

‘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.²

[10] The following directions apply to issues 1 and 2 the ‘agreed’ matters set out at [5] above and:

1. All parties are to confirm their agreement to the matters set out [5] above by no later than **4pm, Wednesday 15 April 2020.**
2. The CFMMEU (M&E) is to file a draft determination and a submission in support of its proposed variation by no later than **4pm, Wednesday 15 April 2020.**
3. Ai Group is to file a draft determination and a submission in support of its proposed variation by no later than **4pm, Wednesday 15 April 2020.**
4. Interested parties are to file any submission in reply to the submissions filed pursuant to directions 1 and 2, by no later than **4pm, Wednesday 13 May 2020.**
5. Liberty to apply.

[11] A further conference will be convened after the reply submissions have been filed.

² Ai Group [submission](#), 13 November 2015.