



The Australian Industry Group  
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Australia  
ABN 76 369 958 788

11 December 2020

Commissioner Bissett  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

Dear Commissioner,

**AM2020/25 - Four yearly review of modern awards – Black Coal Mining Industry Award**

We refer to the above matter and to the Correspondence received from the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) on 10 December 2020.

The CFMMEU has proposed two alternative variations to address the issues raised at paragraphs [23] – [25] of its [20 April 2020 submission](#). These are referred to in the Correspondence as Option 1 and Option 2.

Clause 21.2(b)(ii) and (iii) provide for a 200% overtime rate for employees who:

- work a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays; or
- 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;

The overtime entitlement provided for in the above provisions follow the rosters specified in sub-clauses (ii) and (iii).

Ai Group opposes each of the variations proposed by the CFMMEU as the terminology used to refer to the employees impacted by cl. 21.2(b)(ii) and 21.2(b)(iii) defines the circumstances under which the 200% minimum rate applies by reference to the shifts the employee works rather than the nature of the roster.

With respect to Option 1, the designation of employees referred to in clause 21.2(b)(ii) and (iii) as ‘weekend workers’ is unhelpful and potentially confusing as the relevant rosters referred to in cl. 21.2(b)(ii) require ordinary shifts on public holidays. Additionally, the proposed inclusion of the words “who work regular weekend shifts” in cl. 21.2(b) suggests that the clause is enlivened when employees work regular weekend shifts as opposed to working a roster described in cl. 21.2(b).

Similarly, Option 2 proposes new clauses C.1.5 and D.1.5 which include headings that suggest that the 200% overtime rate provided for in cl. 21.2(b)(ii) and (iii) follows the regularity of the work actually performed by an employee as opposed to the nature of the roster worked:

C.1.5 Full-time and part-time production and engineering employees – ordinary shifts regularly worked on Public Holidays, Saturdays and Sundays – Overtime Rates

...



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C.1.5 [sic] Full-time and part-time staff employees – ordinary shifts regularly worked on Public Holidays, Saturdays and Sundays – Overtime Rate

As the variations proposed by the CFMMEU raise difficulties pertaining to the appropriate term to denote employees referred to in clauses 21.2(b)(ii) and (iii), Ai Group recommends that the issue raised in paragraphs [23] – [25] of the CFMMEU's [20 April 2020 submission](#) be resolved by inserting notes after clauses C.1.3 and D.1.3 as proposed in the [Report](#) provided to the Commission on 7 December 2020.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hamish Harrington'.

**Hamish Harrington**  
Workplace Relations Policy Adviser