

FAIR WORK COMMISSION  
FOUR YEARLY REVIEW OF MODERN AWARDS  
AM 2014/67 - BLACK COAL MINING INDUSTRY AWARD

FURTHER SUBMISSION BY THE CONSTRUCTION, FORESTRY, MINING  
AND ENERGY UNION - MINING AND ENERGY DIVISION ("CFMEU")  
EXPOSURE DRAFT - REPUBLISHED 4 NOVEMBER 2015

On 3 December 2015, the CFMEU filed a submission on the republished exposure draft of the Black Coal Mining Award 2015. The submission addressed the provisions of casual employment, overtime for 6 day roster employees or 7 day roster employees and the provisions of Schedules C and D - Summary of Hourly Rates of Pay. This submission addresses some points in that submission.

There is also a further point in the exposure draft that we have found since that submission and that needs to be addressed.

*Overtime - 6 Day Roster Employees and 7 Day Roster Employees*

With respect to the provisions for overtime for 6 day roster employees and 7 day roster employees, there is a need to correct an error in the explanation in paragraph 8 of the submission of 3 December 2015 regarding the sub clause as set out in paragraph 5 of that submission and to clarify a further part of the explanation. The sub clause as set out in paragraph 5 of the submission of 3 December 2015 is correct with the exception of a minor amendment that does not affect the application of the sub clause.

The minor amendment to sub clause 14.3 in paragraph 5 is in sub clause 14.3(c), where the reference to "a rotating night shift" should read "any rotating night shift". This makes it consistent with sub clause 14.3(a) and does not change the effect and intent of the sub clause.

In essence sub clause 14.3 in our submission of 3 December 2015 provides that if a 6 day roster employee or a 7 day roster employee works overtime whilst rostered on an afternoon shift or night shift (rotating or permanent) or rostered on an afternoon or night shift (rotating or permanent) on a public holiday, the employee is paid at the overtime rate plus the appropriate shift allowance as set out in the sub clause. The sub clause provides that overtime is "all time worked in excess of or outside the ordinary hours of any" afternoon or rotating or permanent night shift. The sub clause also takes into account the working of such overtime on a public holiday.

The subclause in paragraph 5 of the 3 December 2015 submission sets out the correct application of the overtime entitlement in those situations. The sub clause properly reflects the application of sub clauses 17.2(b)(i), 22.2 and 27.4(b) in the current Black Coal Mining Industry Award 2010.

However, the explanation in paragraph 8.1 of the submission of 3 December 2015 is incorrect where it says that the current award provision applies to overtime worked "during hours as defined as an afternoon or night shift". This is contrary to the current award position and the clause set out in paragraph 5 of the submission of 3 December 2015, where the entitlement correctly applies to all time worked in excess of or outside the ordinary hours worked on an afternoon or night shift. For example, if a 7 day roster employee completes ordinary hours on a rotating nightshift (not being a public holiday) at 7.00am and works overtime to 11.00 am, the employee is paid at 215% of the employee's hourly base rate of pay for all overtime up to 11.00 am, and not only for the hours defined in the award as nightshift. This submission sets out the correct position.

Further, to address any potential lack of clarity or presence of ambiguity in paragraph 8.2 of the submission of 3 December 2015, the reference to "no qualification on the payment of overtime plus the applicable shift allowance", means it applies to overtime whether the overtime is rostered or unrostered, worked either immediately before or immediately after ordinary hours, or where

the overtime is not continuous with ordinary hours. Overtime that is not continuous with ordinary hours can be worked on a rostered day off or a non-working day or on a day when ordinary hours are worked. This description of the overtime is consistent with the clause in paragraph 5 of the 3 December 2015 submission and the application of sub clauses 17.2(b)(i), 22.2 and 27.4(b) of the current award. In that respect, for completeness, paragraph 8.5 of the submission of 3 December 2015 should be taken to apply the same description of overtime.

*Schedule C and Schedule D - Summary of Hourly Rates of Pay*

Sub clause 17.2(b) of the current award provides that overtime is paid at double time (other than on public holidays) to employees who work any of three types of roster. The rosters are:

- (i) six day roster or seven day roster;
- (ii) a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays;
- (iii) 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.

It is observed that in addition to the issues raised in our submission of 3 December 2015, both schedule C and D do not take into account the overtime provisions for employees who work either of roster (ii) or roster (iii) mentioned above. The schedules need to be amended to take those rosters into account.

*Sub clause 13.3 - Change of shift for permanent day shift employees*

The equivalent of this sub clause in the current award is sub clause 22.3. Sub clause 22.3 (a) provides that where a day shift employee is required to work afternoon or night shift on at least three consecutive working days, the employee will be paid at overtime rates for the first afternoon or night shift and in accordance with sub clause 22.2 for any other shifts. Clause 22.2 provides for the

shiftwork rates and also for overtime rates for 6 day roster employees as well as 7 day roster employees.

As part of the review, the exposure draft has removed the overtime provisions for 6 day roster employees and 7 day roster employees from the shiftwork rates clause in sub clause 22.2 of the current award and placed them in a separate provision, namely sub clause 14.3 in the exposure draft.

Sub clause 13.3 (a)(i) of the exposure draft provides for overtime payments in accordance with sub clause 14.3. However, sub clause 14.3 only applies to 6 day roster employees and to 7 day roster employees, whereas the current award provides for overtime for other employees. Accordingly, to reflect the current award provision, sub clause 13.3(i) should refer to "clause 14.2 or 14.3".

Sub clause 13.3 applies to the working of ordinary hours. To clarify that position it is submitted that the words "ordinary hours on" be inserted between the words "work" and "afternoon" in the first paragraph in sub clause 13.3(a) and the words "work" and "afternoon" in sub clause 13.3(b), such that it would mean that an employee required to work ordinary hours on the afternoon or night shift would be paid in accordance with the entitlements in the sub clause.

### *Summary*

As a consequence of this submission the CFMEU Mining and Energy Division seeks:

- (i) That sub clause 14.3(c) in our submission dated 3 December 2015 be amended to delete the word "a" before the word "rotating" and insert the word "any" in lieu thereof.
- (ii) That Schedule C and Schedule D take into account employees who work rosters as set out in sub clause 17.2(b) of the current award.

- (iii) That sub clause 13.3(i) of the republished exposure draft be amended to refer to add the words "14.2 or" between "clause" and "4.3" and that the words "ordinary hours on " be added after the word "work" in the first line in both sub clause 13.3(a) and 13.3(b).

Construction, Forestry, Mining and Energy Union

Mining and Energy Division

16 June 2016