

FAIR WORK COMMISSION

Black Coal Mining Industry Award 2010 AM2014/67

Submission on behalf of the Coal Mining Industry Employer Group

1. This submission is made on behalf of the Coal Mining Industry Employer Group (**CMIEG**) in relation to the Statement issued by Justice Ross, President, on 21 March 2018 ([\[2018\] FWC 1631](#)), concerning the further revised [Exposure Draft](#) of the Black Coal Mining Industry Award published on 13 June 2017 (**BCMI Award**).
2. Since the Exposure Draft of 13 June 2017 various issues relating to the BCMI Award have been the subject of further submissions by the parties. The subsequent submissions appear to be properly summarised in the "Summary of Submissions on Further Revised Exposure Draft" (published on [22 March 2018](#)) (**Summary**).
3. In that Summary, there are two interlinked matters of particular significance to the interested parties in respect of the BCMI Award that remain outstanding. Each of those matters concerns public holiday payments. Those matters concern:
 - (a) **Clause 14.3(c) and (d)** (relating to six day and seven day roster employees) and **Schedules C and D – Summary of Hourly Rates of Pay**, as well as consequential amendments.

The CFMEU has proposed an amendment to insert new paragraphs (c) and (d) concerning overtime worked on public holidays by six day and seven day roster employees,¹ and also proposes consequential amendments to Schedules C and D.² The CMIEG opposes amendments sought by the CFMEU,³ and the AiGroup also opposes the amendments.⁴ The CFMEU has confirmed that it presses its amendments,⁵ and each of the CMIEG⁶ and AiGroup⁷ maintain their opposition to those amendments.

¹ [CFMEU submission](#) of 3 December 2015 at [5].

² [CFMEU submission](#) of 3 December 2015 at [11].

³ [CMIEG submission](#) of 22 January 2016 at [28]-[29].

⁴ [AiGroup submission](#) of 7 December 2015

⁵ [CFMEU submission](#) of 30 June 2017.

⁶ [CMIEG submission](#) of 30 June 2017 at 4, which also refers to [CMIEG submission](#) of 22 January 2016 at [28]-[29].

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- (b) **Clause 18.4** relating to an employee required to work on a recognised public holiday, previously clause 18.5 in the [Exposure Draft](#) of 26 September 2014.

The CFMEU has made submissions about the interpretation of the clause,⁸ and also has sought a corresponding amendment to clause 14.3 (see above). That amendment is opposed by the CMIEG and AiGroup.⁹

AiGroup has also sought, and continues to seek, its own amendment to the clause,¹⁰ which is opposed by the CFMEU in relation to payment of shift allowances when ordinary hours are worked on a public holiday.¹¹ The AiGroup amendment accords with the CMIEG's construction of the clause.

Proposed approach for dealing with outstanding matters

4. Given the significance of the matters described in paragraph 3 (above), the CMIEG respectfully requests to be heard on those matters concerning public holiday payments. We suggest that a brief hearing would both permit the interested parties to be heard, and also be of benefit in assisting the Commission in determining the matters.
5. Alternatively, or as an interim step, the above outstanding matters may be most efficiently dealt with by the parties and the Commission in conference convened by a delegated member of the Full Bench.
6. We confirm that the CMIEG does not wish to be heard in respect of any other outstanding matters dealt with in the Summary (excepting of course common issue matters in which the CMIEG is participating) and is content for those matters to be dealt with on the papers.

Ashurst Australia

Legal representative for the CMIEG

30 March 2018

⁷ [AiGroup submission](#) of 11 July 2017 at [246].

⁸ [CFMEU submission](#) of 20 November 2015.

⁹ As confirmed in the [CMIEG submission](#) of 22 January 2016 at [3]-[27]; cf [CMIEG and CFMEU joint submission](#) of 20 October 2014. See also [CFMEU submission](#) of 30 June 2017 at 5. (Note: The CFMEU and CMIEG made a joint submission about the clause (see [CMIEG and CFMEU joint submission](#) of 20 October 2014. [CFMEU submission](#) of 30 June 2017 at 5), but which is now opposed by the CMIEG.)

¹⁰ [AiGroup submission](#) of 20 November 2015; [AiGroup submission](#) of 11 July 2017 at [249].

¹¹ [CFMEU submission](#) of 30 June 2017 at [7]-[10].