

**From:** Eliza Sarlos <esarlos@cfmeu.com.au>  
**Sent:** Tuesday, 28 July 2020 10:02 AM  
**To:** Chambers - Gostencnik DP <Chambers.Gostencnik.DP@fwc.gov.au>  
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**Subject:** Re: AM2020/25 4 yearly review - Black Coal Mining Industry Award [SEC=UNCLASSIFIED]

Dear Associate

We understand the concerns expressed by the AI Group and CMIEG in their emails of last night. By way of brief response we wish to say the following.

The current matter relates to the finalisation of the exposure draft of the *Black Coal Mining Industry Award 2010 (BCMI Award)*, and addresses two separate requests to ensure that the language in the exposure draft is consistent with the relevant entitlements currently available under that Award.

One of those requests was the result of an application made by the then CFMMEU to amend the language of the exposure draft as republished on 4 November 2015 to ensure consistency with the entitlements as they were then, and currently are, in the BCMI Award. In this context it is entirely ordinary for the CFMMEU to have the opportunity to reply to any matters raised in response, especially where the question of whether shiftwork rates are payable for weekend work is inextricably linked to the question of whether they are payable on public holidays, given the history of the relevant provisions.

This is particularly the case where the request to respond is confined to addressing matters raised in reply for the first time. In January 2016 the CMIEG advised that it was of the view that the proper interpretation of the *Coal Mining Industry (Production and Engineering) Interim Consent Award 1990* was that it departed from previous awards and did not provide for shift work rates to be paid in addition to other penalty rates. The CMIEG repeated this submission more recently, in its submissions of 13 May 2020. In its submissions of 24 July 2020 the CMIEG has now abandoned that position, presenting for the first time arguments that it was the *Coal Mining Industry (Production and Engineering) Consolidated Award 1997* that departed from that entitlement in a significant way. The CMIEG has also made various statements about the way in which decisions made by the Coal Industry Tribunal (CIT) should be treated in the context of the modern award objective. The CFMMEU has not had the opportunity to respond to these submissions and seeks permission to do so .

Kind regards

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