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**Sent:** Tuesday, 1 September 2020 4:23 PM  
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**Subject:** Re: AM2020/25 - Four yearly review of modern awards [SEC=UNCLASSIFIED]

Dear Associate

We refer to the above matter and to your email of yesterday.

In brief, the CFMMEU considers that the following issues have some relevance to the current proceedings.

At [59] of the decision in *4 yearly review – Overtime for Casuals* [2020] FWCFB 4350 (**Decision**) the Full Bench found that, where “*there is no indicator arising from the text or the historical industrial context which suggests a different approach should be taken*” that the relevant clauses being applied in that matter should be applied concurrently, rather than one at the exclusion of another.

This is consistent with the approach advanced by the CFMMEU in the present matter in relation to the way in which shiftworker provisions interact with both weekend and public holiday penalties in the *Black Coal Mining Industry Award 2010 (BCMI Award)*. The CFMMEU wishes to submit that, in addition to what has previously been submitted by the CFMMEU, the approach set out in the Decision should be applied to ensure consistency throughout the BCMI Award, and is relevant authority as to the correct approach to take given the circumstances.

In particular, however, the CFMMEU refers to the language of the Full Bench set out in the [Draft Determination](#) for the BCMI Award. At [3] of the Draft Determination the Full Bench propose that references are expressed as a “*% of hourly rate of pay*”. Noting the proposed variations submitted by the parties to date, the CFMMEU considers that adopting the language of the Full Bench in the Decision may assist in resolving any residual ambiguity, so that the relevant clauses refer to the *hourly rate of pay* instead of the language either proposed or currently in use across the relevant clauses.

Kind regards

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