



# DIRECTIONS

*Fair Work Act 2009*

s.156–Four yearly review of modern awards

## **Four yearly review of modern awards - *Black Coal Mining Industry Award***

**2010**

(AM2020/25)

COMMISSIONER BISSETT

MELBOURNE, 18 DECEMBER 2020

*Four yearly review of modern award.*

[1] On 18 November 2020 the Full Bench issued its decision in the 4 yearly review of modern awards in relation to the *Black Coal Mining Industry Award 2010* (Black Coal Award).<sup>1</sup> The variations necessary to the exposure draft of the Black Coal Award arising from that decision were then subject to conference between the interested parties convened by the Commission on 9 December 2020.

[2] During that conference the CFMMEU raised an issue<sup>2</sup> in relation to the interaction between the casual loading and shift work and weekend penalty rates and hence the rates expressed at clauses 23.1, 23.2 and D.2.2 of the exposure draft. The CFMMEU say that the casual rate expressed is incorrectly calculated and that it should be calculated on a compounding, not cumulative basis. The issue arose following a consideration of the decision of the Full Bench in the overtime for casuals decision<sup>3</sup> in relation to the Black Coal Award and a need for consistency in approach.

[3] The Full Bench dealing with the Black Coal Award recognises that submissions have not been received in relation to this issue but is of the view that this matter should be considered prior to the final determination of necessary variations to the exposure draft. For this reason the Full Bench has determined that the issue should be considered and, to this extent, submissions should be sought from parties on the question raised by the CFMMEU.

[4] The following directions are therefore issued in relation to the question of the interaction of the casual loading and shift and weekend penalty rates.

1. The CFMMEU, and any other party supporting the proposition of the CFMMEU, is to file with the Commission submissions in support of its proposition that the casual rate and shift and weekend penalties should be

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<sup>1</sup> [2020] FWCFB 5908

<sup>2</sup> [Ai Group report to Commission 7 December 2020](#). See comments in relation to the proposed clause 23.1, clause 23.2 and clause D.2.2

<sup>3</sup> [2020] FWCFB 4350

calculated on a compounding and not cumulative basis by **4.00pm Friday 15 January 2021**;

2. Any submissions in reply to that of the CFMMEU, including submission opposed to that of the CFMMEU, are to be filed with the Commission by **4.00pm Friday 29 January 2021**.
3. Any reply submissions are to be filed by **4.00pm Friday 5 February 2021**.
4. Parties are to advise by **4.00pm Wednesday 10 February 2021** if they wish to be heard or are content for the Full Bench to determine the matter on the basis of submissions filed.

[5] Parties are granted liberty to apply to vary these directions.

[6] Submissions filed in accordance with these directions should be sent to [amod@fwc.gov.au](mailto:amod@fwc.gov.au).



COMMISSIONER

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