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Justice G M Giudice
President
Australian Industrial Relations Commission
GPO Box 1994
Melbourne VIC 3000

1 August 2008

Dear President

METALS INDUSTRY (AM/2008/5): AWARD MODERNISATION SUBMISSION

Please find attached a copy of the AMMA submission in respect of the review of awards in the metals industry.

The AMMA submission is limited to the interaction of the scope of the proposed metals industry award and the proposed Mining Industry Safety Net Award 2010.

Please feel free to contact me if you have any questions about the submission.

Yours sincerely,



Christopher Platt
Director Workplace Policy

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

s.576E - Procedure for carrying out award modernisation process

Request from the Minister for Employment and Workplace Relations

(as revised 16 June 2008)

Award modernisation

(AM/2008/5)

Submission of the Australian Mines and Metals Association

Award Modernisation For The Metal Industry

1 August 2008

INTRODUCTION

1. This submission is provided pursuant to the revised timetable for pre-drafting consultation for the metal industry issued by the Full Bench on 22 July 2008.
2. The Australian Mines and Metals Association (**AMMA**) has prepared a draft modern award for the mining industry for consideration by the Commission. The draft award is referred to in this submission as the Mining Industry Safety Net Award 2010 (**MISNA**). It is attached as Appendix 1.
3. This submission deals with the appropriate scope of a modern award for the metal industry and its relationship to the mining industry.

COVERAGE OF THE MODERN METAL INDUSTRY AWARD

4. The determination of the scope of each modern award is a critical element of the award modernisation process.
5. The AMMA submission in respect of the mining industry explains the approach AMMA has taken to determine the proposed scope of the modern mining industry award (see paragraphs 8 -31).
6. In respect of the interaction between the scope of the modern mining industry award and the modern metal industry award, AMMA submits that the modern metal industry award should not cover work of employers to the extent that they are engaged in the mining industry (as defined). This includes employers engaged in the servicing, maintaining (including mechanical, electrical, fabricating or engineering) or repairing of plant and equipment used in mining activities using employees principally employed to perform work at a location where mining activities are being performed. This should be covered by the MISNA.
7. Accordingly, AMMA submits that:
 - a. the scope of the modern metal industry award should exclude the mining industry activities described in clause 3.2.5 of the MISNA; and

- b. the operations or activities of employers to which the *Manufacturing and Associated Industries Employees Award 2010* applies should continue to be regulated by this award, except to the extent that they are covered by clause 3.2.5.

* * * *

Christopher Platt

Director - Workplace Policy

1 August 2008

Appendix 1- Mining Industry Safety Net Award

[INSERT AIRC FORMALITIES]

MINING INDUSTRY SAFETY NET AWARD 2010

PART 1 - MACHINERY PROVISIONS

1. AWARD TITLE

This award is known as the Mining Industry Safety Net Award 2010

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3. COVERAGE

3.1 Employers and employees covered

This award applies to:

- 3.1.1 **employers** who are engaged in the mining industry, in respect of work by their **employees** in or in connection with the mining industry in a classification in this award; and
- 3.1.2 their **employees** engaged in a classification in this award whilst they are performing work in or in connection with the mining industry.

3.2 Definition of mining industry

For the purposes of this clause: **mining industry** means:

- 3.2.1 extracting the following metals, minerals or ores from the earth by any manner or method (including land clearing, preparatory work and rehabilitation during the life of a mine): antimony, arsenic, beryllium, bismuth, cadmium, caesium, chromite, cinnabar, cobalt, columbium, copper, diamond, galena, gallium, germanium, gold, hafnium, ilmenite, indium, iridium, iron ore, ironstone, lead, lithium, magnesium, manganese, mercury, molybdenite, molybdenum, monazite, nickel, niobium, osmiridium, osmium, palladium, platinum, rare earth metals, uranium and other radio active minerals, rutile, scheelite, selenium, silica, silver, tantalum, tin, titanium, tungsten, vanadium, zinc, zircon, zirconium;
- 3.2.2 the processing, smelting and refining of the metals, minerals, or ores covered by clause 3.2.1;
- 3.2.3 the transportation, handling and loading of any of the metals, minerals, or ores covered by clause 3.2.1 on a mining lease or tenement;
- 3.2.4 the transportation, handling and loading of any of the metals, minerals, or ores covered by clause 3.2.1 by the mine operator, a related company or an entity principally engaged by the mine operator to do such work, using the plant or infrastructure (including rail and/or ports) of the mine operator or a related company;
- 3.2.5 the servicing, maintaining (including mechanical, electrical, fabricating or engineering) or repairing of plant and equipment used in the activities set out in clauses 3.2.1 to 3.2.4 by employees principally employed to perform work at a location where the activities described above are being performed; or
- 3.2.6 the provision of temporary labour services used in the activities set out in clauses 3.2.1 to 3.2.5, by temporary labour personnel principally engaged to perform work at a location where the activities described above are being performed.

3.3 Exclusions

This award does not apply to :

- 3.3.1 **employers or employees** to whom an enterprise award applies;
- 3.3.2 work which historically has not been regulated by awards;
- 3.3.3 high income earners;
- 3.3.4 **employers** in respect of their operations or activities in the following industries or occupations:
- Aluminium;
 - Catering, accommodation, cleaning & incidental services (unless employed by mine operator or a related company);
 - Clerical or Administrative;
 - Information technology professionals, professional engineers, geologists and scientists;
 - Prospecting and off-site resource assessment for the purposes of potential mine development;
 - Quarrying of stone, crushed stone, sand and gravel and land reclamation (including dredging);
 - Salt;
 - Security services (unless employed by mine operator or a related company);
 - Steel making (including pig iron);
- 3.3.6 **employers** in respect of their operations or activities to which an award for the coal mining industry applies;
- 3.3.7 **employers** in respect of their operations or activities to which the *Manufacturing, Engineering and Associated Industries Award 2010* applies, except for work covered by clause 3.2 above.
- 3.3.8 mining activities in the County of Yancowinna; and
- 3.3.9 persons employed:
- in the head office or town office of an **employer**; or
 - engaged in a managerial capacity.

4. DATE THE AWARD STARTS

This award commences on 1 January 2010.

5. DEFINITIONS

Unless the context otherwise requires, in this award:

Act means the Workplace Relations Act 1996 (Cth).

Afternoon shift means any shift finishing after 7.00pm and at or before midnight.

Base rate of pay has the same meaning as in section 4 of the *NES*.

Continuous shift worker means an *employee* engaged to work in a system of consecutive shifts throughout the 24 hours of each of at least six consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the *employer*) and who is regularly rostered to work those shifts.

Employee means a person described in clause 3.1.2 of this award.

Employer means an *employer* described in clause 3.1.1 of this award.

Full rate of pay has the same meaning as in section 6 of the *NES*

Minimum weekly rate means the minimum weekly rate of pay set out in clause 8 - Classifications and minimum wage rates of this award.

NES means the National Employment Standards.

Night shift means any shift finishing after midnight and at or before 8.00am.

Remote work means work required to be performed in any location that is operated by the *employer* as a remote location, including but not limited to sites operating on a fly in/fly out, drive in/drive out or bus in/bus out basis.

Shift work means work performed by *shift workers*.

Shift worker means an *employee* for the time being engaged to work in a system of shifts, being *afternoon shifts*, *night Shifts* or both or a *continuous shift worker*.

Work cycle means a roster cycle made up of working and non-working days.

6. AWARD FLEXIBILITY

6.1 An *employer* and an individual *employee* may agree to vary the application of certain terms of this award to meet the genuine individual needs of the *employer* and the individual *employee*. The terms the *employer* and the individual *employee* may agree to vary the application of are those concerning:

- arrangements for when work is performed;
- overtime rates;
- penalty rates;

- allowances;
 - leave loading;
 - arrangements for *remote work*
- 6.2** The **employer** and the individual **employee** must have genuinely made the agreement without coercion or duress.
- 6.3** The agreement between the **employer** and the individual **employee** must:
- 6.3.1 be confined to a variation in the application of one or more of the terms listed in clause 6.1; and
- 6.3.2 not disadvantage the individual **employee** in relation to the individual **employee's** terms and conditions of employment.
- 6.4** For the purposes of clause 6.3.2 the agreement will be taken not to disadvantage the individual **employee** in relation to the individual **employee's** terms and conditions of employment if:
- 6.4.1 the agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual **employee** under this award and any applicable agreement made under the **Act**, as those instruments applied as at the date the agreement commences to operate; and
- 6.4.2 the agreement does not result in a reduction in the terms and conditions of employment of the individual **employee** under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.
- 6.5** The Agreement between the **employer** and the individual **employee** must also:
- 6.5.1 be in writing, name the parties to the agreement and be signed by the **employer** and the individual **employee** and, if the **employee** is under 18 years of age, the **employee's** parent or guardian;
- 6.5.2 state each term of this award that the **employer** and the individual **employee** have agreed to vary;
- 6.5.3 detail how the application of each term has been varied by agreement between the **employer** and the individual **employee**;
- 6.5.4 detail how the agreement does not disadvantage the individual **employee** in relation to the individual **employee's** terms and conditions of employment; and
- 6.5.5 state the date the agreement commences to operate.
- 6.6** The **employer** must give the individual **employee** a copy of the agreement and keep the agreement as a time and wages record.
- 6.7** The agreement may be terminated:

- 6.7.1 by the **employer** or the individual **employee** giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- 6.7.2 at any time, by written agreement between the **employer** and the individual **employee**.
- 6.8 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an **employer** and an individual **employee** contained in any other term of this award.

PART 2 - MODERN AWARD TERMS

7. TYPES OF EMPLOYMENT

7.1 Types of employment

- 7.1.1 An **employee** may be engaged on a full-time, part-time or casual basis.
- 7.1.2 Full-time and part-time **employees** may be engaged for a specified period of time, for a specified task, on a continuing basis or on a job-share basis.

7.2 Full-time employment

- 7.2.1 A full-time **employee** is an **employee** who is engaged to work an average of 38 ordinary hours per week.

7.3 Part-time employment

- 7.3.1 A part-time **employee** is an **employee** who:
- 7.3.1.1 is engaged to work an average of fewer than 38 ordinary hours per week; and
 - 7.3.1.2 receives, on a pro-rata basis, equivalent pay and conditions to those of full-time **employees** who do the same kind of work.

- 7.3.2 For each ordinary hour worked, a part-time **employee** will be paid no less than 1/38th of the minimum weekly rate of pay for his or her classification in Clause 8 - Classifications and Minimum Wage Rates.

- 7.3.3 An **employer** must inform a part time **employee** of his or her ordinary hours of work and starting and finishing times.

7.4 Casual employment

- 7.4.1 A casual **employee** is one engaged and paid as such. A casual **employee's** ordinary hours of work are the lesser of an average of 38 hours per week or the hours required to be worked by the **employer**.

7.4.2 For each hour worked, a casual **employee** will be paid no less than 1/38th of the minimum weekly rate of pay for his or her classification in Clause 8 - Classifications and Minimum Wage Rates, plus a casual loading of 20%.

7.4.3 The casual loading is paid in lieu of annual leave, public holidays, personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

7.5 Probation period

7.5.1 An **employer** may require a new **employee** to complete a probation period of up to six months, or such longer period as is reasonable in the circumstances.

7.6 Abandonment of employment

7.6.1 An employee who is absent from work for a continuous period exceeding three working days without the consent of the employer and without reasonable excuse, shall be deemed to have abandoned his or her employment. The termination of employment will be deemed to have taken effect from the employee's last attendance or the last day on which the employee notified the employer of the reason for the absence.

8. CLASSIFICATIONS AND MINIMUM WAGE RATES

8.1 Adult employees

8.1.1 A full-time adult **employee** who has full capacity to perform the inherent requirements of his or her classification must be paid a minimum weekly rate for their classification as set out in the table below:

Level	Classification	Minimum weekly rate \$
Entry Level	Introductory	543.78*
Level 1	Basic	569.80
Level 2	Intermediate	591.80
Level 3	Competent	615.90
Level 4	Advanced	638.00
Level 5	Advanced specialist	680.10

*Note – Due to wage compression since the establishment of the relativities, the correct weekly rate is below the minimum adult wage. As a result the minimum adult weekly wage has been used.

8.1.2 The rates of pay in this award incorporate:

8.1.2.1 the 2008 Safety Net Review;

8.1.2.2 compensation for all disabilities associated with the working conditions of **employees** covered by this award other than those for which an allowance is specifically provided for in clause 9 - Allowances.

8.1.3 The classification structure and descriptors for the above classifications are contained in Schedule 1.

8.2 Junior employees

8.2.1 Where the law permits junior **employees** to perform work in the mining industry, the junior **employee** will be entitled to the percentage of the applicable adult weekly wage (in the case of part-time or casual **employees** the hourly rate) for their classification as set out in the table below:

Age	% of adult rate
16 years or less	75
At 17 years	85
At 18 years	100

8.3 Supported wage for employees with disabilities

8.3.1 The supported wage arrangements for **employees** with disabilities are set out in Schedule 2.

8.4 Apprentices and trainees

8.4.1 The terms of this award apply to apprentices and trainees, subject to the provisions of an applicable contract of apprenticeship or training agreement operating under federal, state or territory apprenticeship or training legislation and the National Training Wage Award 2000 (or any successor award).

8.4.2 Trainees will be entitled to the percentage of the applicable adult weekly wage (in the case of part-time or casual employees the hourly rate) for their classification as set out in the National Training Wage Award 2000 (or any successor award)

8.4.3 Apprentices will be entitled to the percentage of the applicable adult weekly wage (in the case of part-time or casual employees the hourly rate) for their classification as set out in the table below:

Year of apprenticeship	% of adult rate
1st year	45
2nd year	55
3rd year	75
4th year	85

8.5 Piece rates (including Contract Mining Rates)

8.5.1 An **employer** and an **employee** may agree to remunerate the **employee** in whole or part by piece rates, in lieu of (in whole or part) the rates and allowances provided for in this award. The agreement must be made without coercion or duress.

