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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.

- 8.5.2 The **employer** must record a piece rate agreement made under this clause in writing and provide a copy to the **employee**. The **employer** must keep the agreement as a time and wages record.
- 8.5.3 The piece rate agreement must set out the following information:
- the parties to the agreement;
 - the date the agreement commences to operate, and
 - the basis on which the piece rate payment is made and how piece work will be measured.
- 8.5.4 An **employee** working under a piece rate agreement must:
- 8.5.4.1 be paid no less than the amount to which the **employee** would have been entitled to receive under the rates and allowances prescribed by this award, if the piece rate agreement had not been made; and
- 8.5.4.2 not disadvantage the **employee** in relation to the his or her terms and conditions of employment.
- 8.5.5 The **base rate of pay** for an **employee** working under a piece rate agreement is the **base rate of pay** contained in this award for the **employee's** classification and level.
- 8.5.6 An agreement made under this clause may be terminated by written agreement between the **employer** and the **employee** or by either party giving 4 weeks notice in writing to the other party and the agreement will cease to operate at the end of the notice period.
- 8.6 Salary sacrifice**
- 8.6.1 An **employee** and an **employer** may agree to salary sacrifice any or all of the entitlements provided by this award, provided that the arrangement must comply with relevant laws. The entitlements that would otherwise be payable to the **employee** under this award will be reduced by the amount of the salary sacrificed.
- 8.6.2 Where the salary sacrifice results in a tax, charge or other cost to the **employer** (such as fringe benefits tax) the additional cost will be deducted from the **employee's** gross entitlement.
- 8.6.3 The **employer** must record a salary sacrifice arrangement made under this clause in writing and provide a copy to the **employee**. The **employer** must keep the agreement as a time and wages record.
- 8.6.4 A salary sacrifice arrangement may be made for a term or on an ongoing basis. Where it is made on an ongoing basis, it is terminable by either party giving 4 weeks notice in writing and the agreement will cease to operate at the end of the notice period. Where it is made for a term, it ceases to operate at the end of the term, unless renewed by agreement.

9. ALLOWANCES

Allowances are "all purpose" allowances only if expressly stated in this clause.

Where an employee is paid by the hour, the allowance will be 1/38th of the weekly allowance.

The allowances under this award will be varied periodically in a manner consistent with the Furnishing and Glass Industries Allowances decision [Print M9675, 21 March 1996]

9.1 Responsibility and qualification allowances

9.1.1 Leading hand

9.1.1.1 An **employee** appointed by the **employer** as a leading hand, will be paid a Leading Hand payment of \$22.00 per week.

9.1.2 First aid

9.1.2.1 An **employee** who holds first aid qualifications from St John Ambulance or an equivalent body, and who is appointed by the **employer** to participate in the emergency response team or otherwise to perform first aid duty, will be paid a First Aid payment of \$11.70 per week.

9.1.3 Licence allowance (Electricians)

9.1.3.1 An **employee** who is required by his or her **employer** to hold an Electrical Technicians licence (or equivalent) will be paid an all purpose allowance of \$21.00 per week.

9.2 Work conditions and disability allowances

9.2.1 Underground allowance

9.2.1.1 **Employees**, other than employees classified as underground miners, whilst required by their **employer** to work underground will be paid an allowance of \$1.20 per hour.

9.2.2 Rail allowance

9.2.2.1 **Employees** who are assessed as being mainline competent and appointed by their **employer** as Locomotive Drivers and required to operate on the mainline will receive a Rail Allowance of 30% of the ordinary hourly **base rate of pay**.

9.3 Reimbursement allowances

9.3.1 Meal Allowance for Overtime Work

9.3.2 An **employee** will be paid a meal allowance of \$9.20 on each occasion that the **employee** is entitled to a rest break under clause [15.2] - Rest breaks during overtime work, provided that an allowance is not required to be paid if the **employer** provides a meal or meal-making facilities or if the

employee was notified no later than the previous day or shift that he or she would be required to work the overtime.

9.3.3 **Tool allowance**

9.3.4 An **employee** who is required by the **employer** to supply and maintain tools ordinarily required in the performance of his or her work will be paid an allowance of \$11.66 per week.

10. ANNUALISED WAGE AND COMPOSITE HOURLY RATE ARRANGEMENTS

10.1 Annual salary in lieu of award provisions

10.1.1 An **employer** may pay an **employee** an annual salary in lieu of any or all of the following provisions of the award :

- Clause [8] - Minimum wage rates
- Clause [9] - Allowances;
- Clause [16] - Overtime and Penalty rates; and
- Clause [21.5] - Annual leave loading.

10.1.2 Where an annual salary is paid the **employer** must specify in writing the annual salary that is payable and what provisions of this award will not apply in lieu of the annual salary arrangement.

10.2 Annual salary not to disadvantage employees

10.2.1 The annual salary must be no less than the amount to which the **employee** would have been entitled to receive under the relevant wage rates, penalties, allowances and loadings prescribed by this award over the duration of the arrangement. The annual salary is paid in full satisfaction of any obligation to otherwise make payments to the **employee** under this award for the provisions that will not apply in lieu of the salary and may be relied upon to set off any such obligation, whether of a different character or not.

10.3 Base rate of pay for employees on annual salary arrangements

10.3.1 For the purposes of the **NES**, the **base rate of pay** of an **employee** receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant Minimum weekly rate of pay in Clause 8 - Classifications and Minimum Wage Rates and excludes any incentive based-payments, bonuses, loadings, monetary allowances, overtime and penalties and any other separately identifiable amounts incorporated into the annual salary.

10.4 Composite rate in lieu of award provisions

10.4.1 Where an employee is paid on an hourly basis, an **employer** may pay an **employee** a composite hourly rate in lieu of any or all of the following provisions of the award :

- Clause [8] - Minimum wage rates
- Clause [9] - Allowances;
- Clause [16] - Overtime and Penalty rates; and
- Clause [21.5] - Annual leave loading.

10.4.2 Where a composite hourly rate is paid the **employer** must in writing specify the composite rate that is payable and what provisions of this award will not apply in lieu of the composite rate arrangement.

10.5 Composite hourly rate not to disadvantage employees

10.5.1 The composite hourly rate must be no less than the amount to which the **employee** would have been entitled to receive under the relevant wage rates, penalties, allowances and loadings prescribed by this award. The composite hourly rate is paid in full satisfaction of any obligation to otherwise make payments to the **employee** under this award for the provisions that will not apply in lieu of the composite rate and may be relied upon to set off any such obligation, whether of a different character or not.

10.6 Base rate of pay for employees on composite hourly rate arrangements

10.6.1 For the purposes of the **NES**, the **base rate of pay** of an **employee** receiving a composite hourly rate under this clause comprises the portion of the composite hourly rate equivalent to the relevant minimum hourly rate of pay in Clause 8 - Classifications and Minimum Wage Rates and excludes any incentive based-payments, bonuses, loadings, monetary allowances, overtime and penalties and any other separately identifiable amounts incorporated into the composite rate.

11. PAYMENT OF WAGES

11.1 The **employer** will pay the **employees** wages, penalties and allowances at a frequency of not longer than monthly by electronic funds transfer or other agreed method.

11.2. If an **employee** cannot be usefully employed because of any ban, strike or through any breakdown in machinery or any stoppage of work which occurs as a result of matters beyond the **employer's** control for a period of greater than 4 hours, the **employer** may deduct pay for any period during the day that an **employee** cannot be usefully employed, provided that the **employee** may be required to take accrued annual leave in such circumstances.

- 11.3 An **employer** may deduct from any amount required to be paid to an **employee** under this clause the amount of any overpayment of wages or allowances.

12. SUPERANNUATION

- 12.1 An **employee** may elect to have the **employer** make additional superannuation contributions on the **employee's** behalf by way of salary sacrifice as per clause 8.7 from his or her gross wages (e.g. before tax pay), provided that the entitlements that would otherwise be payable to the **employee** under this award will be reduced by the amount of the salary sacrificed.

13. ORDINARY HOURS OF WORK

- 13.1 A full-time **employee's** ordinary hours of work will be an average of 38 hours per week. The ordinary hours of part-time and casual **employees** will be in accordance with Clause 7 - Types of employment.
- 13.2 Travel time shall not be regarded as time worked for any purpose under this award.
- 13.3 An **employer** may require an **employee** to work reasonable additional hours at overtime rates.

13.4 **Employees Other Than Shift Workers**

- 13.4.1 **Employees**, other than **shift workers**, may be required to work up to 12 ordinary hours per day, between the hours of 6.00am and 7.00pm, Monday to Sunday.
- 13.4.2 An **employer** may agree with a majority of affected **employees** or an individual **employee** to alter the spread of hours in clause 13.4.1 to suit their individual needs.

13.5 **Shift Workers**

- 13.5.1 **Shift workers** may be required to work a shift of up to 12 consecutive ordinary hours (including or excluding meal breaks).

13.6 **Work Cycle**

- 13.6.1 **Employees** may be engaged to work on a **work cycle** made up of working and non-working days.
- 13.6.2 The total ordinary hours of work during a **work cycle** must not exceed 38 hours multiplied by the total number of working and non-working weeks in the cycle.
- 13.6.3 The applicable overtime rates will be paid for work required to be performed in addition to rostered hours on any shift and for time required to be worked in excess of the total ordinary hours in the **work cycle**.

14. ROSTERING

14.1 *Employees other than Shift Workers*

14.1.1 An **employer** may vary an **employee's** days of work or start and finish times to meet the needs of the business by giving 48 hours notice, or such shorter period as is agreed between the **employer** and an individual **employee**.

14.2 *Shift Workers*

14.2.1 A shift system may be implemented by the **employer** and may be altered from time to time to meet the needs of the business in accordance with this clause. The **employer** may carry out operations 24 hours per day, seven days of the week and implement and change roster systems to meet its operational requirements from time to time, having regard to the health and safety of **employees**.

14.2.2 **Employees** may be required to change between day work and **shift work**, **shift work** and day work. An **employee** may be required to commence to perform or cease to perform **Shift work** upon one week's notice.

14.2.3 Where an employee is performing shift work, the **employer** may change shift rosters or require an **employee** to work a different shift roster upon 48 hours' notice. These time periods may be reduced where agreed by the **employer** and the **employee** or at the direction of the **employer** where operational circumstances require.

14.2.4 **Employees** may be required to perform reasonable handover work to ensure continuity of operations. An **employee** who is not relieved as scheduled at the end of a shift, must continue working until relieved or authorised by the **employer** to finish work, which authorisation must not be unreasonably withheld.

14.2.5 The **employer** must, upon request by a directly affected **employee**, consult with directly affected **employees** about any changes made under this clause.

14.3 *Emergency Arrangements*

14.3.1 Notwithstanding anything elsewhere contained in this clause, an **employer** may vary or suspend any roster arrangement immediately in the case of an emergency.

15. BREAKS

15.1 *Meal breaks and rest breaks*

15.1.1 An **employee**, other than a shift worker, is entitled to an unpaid meal break of not less than 30 minutes after every five hours worked.

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- 15.1.2 A **shift worker** working 10 hours or less will be entitled to a paid meal break of 20 minutes per shift.
- 15.1.3 A **shift worker** working for longer than 10 hours will be entitled to paid meal breaks totalling 40 minutes per shift.
- 15.1.4 Breaks will be scheduled by the **employee's** supervisor based upon operational requirements so as to ensure continuity of operations. The **employer** will not require an **employee** to work more than five hours before the first meal is taken or between subsequent meal breaks if any.

15.2 Rest Breaks During Overtime

- 15.2.1 An **employee** may take a paid rest break of 20 minutes after each four hours of overtime worked, if the **employee** is required to continue work after the rest break.
- 15.2.2 The **employer** and an **employee** may agree to any variation of this clause to meet the circumstances of the workplace, provided that the **employer** is not required to make any payment in excess of or less than what would otherwise be required under this clause.

15.3 Minimum Break between Work on successive day or shifts

15.3.1 Employees other than Shift Workers

- 15.3.1.1 When overtime work is necessary it must, wherever reasonably practicable, be arranged so that **employees** have at least 10 consecutive hours off work between work on successive working days.
- 15.3.1.2 An **employee** (other than a casual **employee**) who works so much overtime between the termination of his or her ordinary work on one day and the commencement of his or her ordinary work on the next day that the **employee** has not had at least 10 consecutive hours off work between those times must be released after completion of the overtime until the **employee** has had 10 consecutive hours off work without loss of pay for ordinary working time occurring during such absence.
- 15.3.1.3 If on the instructions of the **employer** an **employee** resumes or continues work without having had the 10 consecutive hours off work, the **employee** must be paid at the relevant overtime rate until he or she is released from work for such period. The **employee** is then entitled to be absent until he or she has had 10 consecutive hours off work without loss of pay for ordinary working time occurring during the absence.

15.3.2 Shift Workers

- 15.3.2.1 For shift workers, the required period of consecutive hours of work is 8 hours. Other arrangements are as per clauses 15.3.1.1 to 15.3.1.3 above.

16. OVERTIME AND PENALTY RATES

16.1 Overtime payments: *Employees other than Continuous Shift Workers*

16.1.1 Except where provided otherwise in this clause, an **employee** (other than a **continuous shift worker**) will be paid the following additional payments for all work done in addition to his or her ordinary hours:

16.1.1.1 50% of his or her ordinary hourly **base rate of pay** for the first three hours and 100% of ordinary hourly **base rate of pay** thereafter, for overtime worked from Monday until noon Saturday;

16.1.1.2 100% of his or her ordinary hourly **base rate of pay** for overtime worked after noon on a Saturday or at any time on a Sunday; and

16.1.1.3 150% of his or her ordinary hourly **base rate of pay** for overtime worked on a public holiday.

16.1.2 An **employee** recalled to work overtime after leaving the **employer's** premises (whether notified before or after leaving the premises) will be engaged to work for a minimum of 4 hours or will be paid for a minimum of four hours work in circumstances where the **employee** is engaged for a lesser period.

16.2 Overtime: Continuous Shift Workers

16.2.1 A **continuous shift worker** will be paid an additional payment for all work done in addition to his or her ordinary hours of 100% of his or her ordinary hourly **base rate of pay**.

16.3 Method of calculation

16.3.1 When computing overtime payments, each day or shift worked will stand alone.

16.3.2 Any payments under this clause are in substitution of any other loadings or penalty rates, including but not limited to shift loadings, casual loading, and penalty rates.

16.4 Time in lieu

16.4.1 An **employee** may elect, with the consent of the **employer**, to take time off in lieu of payment for overtime at a time or times agreed with the **employer**.

16.4.2 The **employee** may take one hour of time off for each hour of overtime, paid at the **employee's** ordinary hourly **base rate of pay**.

16.5 Shift work penalties

16.5.1 A **shift worker** or **continuous shift worker** whilst on **afternoon shift** or **night shift** shall be paid a loading of 15% of his or her ordinary hourly **base rate of pay**.

16.5.2. A **shift worker** or **continuous shift worker** whilst on permanent **night shift** shall be paid a loading of 30% of his or her ordinary hourly **base rate of pay**.

16.6 Weekend work

16.6.1 An **employee** will be paid the following loadings for ordinary hours worked on a Saturday or Sunday:

16.6.1.1 50% of his or her ordinary hourly **base rate of pay** for the first three hours and 100% of ordinary hourly **base rate of pay** thereafter, for ordinary hours worked before noon on a Saturday; and

16.6.1.2 100% of his or her ordinary hourly **base rate of pay**, for hours worked after noon on a Saturday or at any time on a Sunday.

16.7 Public Holidays

16.7.1 An **employee** will be paid a loading of 150% of his or her ordinary hourly **base rate of pay**, for any ordinary hours worked on a Public Holiday.

17. PROCEDURES FOR CONSULTATION, REPRESENTATION AND DISPUTE SETTLEMENT

17.1 Introduction of Change

17.1.1 Where an **employer** has made a definite decision to introduce major changes in production, program, organisation, structure or technology which are likely to have significant effects on **employees**, the **employer** must consult with the **employees** who may be affected by the proposed changes.

17.2 Dispute Resolution Procedure

17.2.1 If an **employee** is concerned about a matter arising under the application of this award or the application of the **NES** that directly affects him or her, and where the **Act** does not otherwise provide access to a remedy in respect of that matter, the following procedure should be followed in order to seek a timely and effective resolution:

17.2.1.1 The issue must first be discussed between the **employee** and the **employee's** immediate supervisor.

17.2.1.2 If not settled, the **employee** and the immediate supervisor should refer the issue for discussion with the relevant manager to try to work it out.

- 17.2.1.3 If not settled, the issue should then be referred for discussion between the **employee** and a more senior manager of the **employee**.
- 17.2.1.4 Where the issue remains unresolved, the **employer** or the **employee** (or a representative authorised in writing by the **employee**) may refer the matter to Fair Work Australia to conciliate on the matter.
- 17.2.1.5 Subject to the **Act**, Fair Work Australia may exercise its conciliation powers in respect of the issue in dispute, and where all parties to a dispute agree exercise arbitration powers in relation to the issue in dispute.
- 17.2.1.6 Work must continue as directed by the **employer** while this procedure is being followed.

PART 3 - INDUSTRY SPECIFIC DETAIL RELATING TO NATIONAL EMPLOYMENT STANDARDS

18. RELATIONSHIP WITH THE NES

- 18.1 This Part provides industry specific detail for the mining industry relating to the National Employment Standards (**NES**).
- 18.2 Together with the **NES**, this award provides the safety net of minimum terms and conditions applicable to **employers** and **employees** within its scope.
- 18.3 The **NES** includes minimum conditions of employment in relation to:
- Division 2 - Maximum weekly hours;
 - Division 3 - Requests for flexible working arrangements
 - Division 4 - Parental leave and related entitlements
 - Division 5 - Annual leave
 - Division 6 - Personal, carers and compassionate leave
 - Division 7 - Community service leave
 - Division 8 - Long service leave
 - Division 9 - Public holidays
 - Division 10 - Notice of termination and redundancy pay; and
 - Division 11 - Fair work information statement.

19. MAXIMUM WEEKLY HOURS

- 19.1 For the purposes of section 12 of Division 2 - Maximum weekly hours of the **NES** and this award, an **employee's** weekly hours may be averaged over a period of up to 52 weeks.

20. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

- 20.1 **Employees** (other than casual employees) are entitled to request a change in working arrangements in certain circumstances provided for in Division 3 - Requests for flexible working arrangements of the **NES**.

20.2 Reasonable refusal based on the circumstances of the industry

- 20.2.1 For the purposes of section 13(5) of Division 3 - Requests for flexible working arrangements of the **NES**, in assessing whether an **employer's** refusal of a request made under Division 3 is on reasonable business grounds, without limiting the generality the following matters must be taken into account:

- 20.2.1.1 whether the **employee** works **remote work** arrangements;
- 20.2.1.2 whether the arrangement would alter the **employee's** rostering arrangements;
- 20.2.1.3 the availability of transport without additional cost to the **employer**;
- 20.2.1.4 the availability of suitably qualified **employees** to provide relief work without disruption to rostering arrangements; or
- 20.2.1.5 any impact to the health and safety of the **employer's** operations.

21. ANNUAL LEAVE

- 21.1 **Employees** (other than casual **employees**) are entitled to annual leave in accordance with Division 5 - Annual Leave of the **NES**.

21.2 Meaning of shift worker for Division 5 - Annual leave of the NES

- 21.2.1 Notwithstanding anything elsewhere contained in this award, for the purposes of Division 5 - Annual Leave of the **NES** **shift worker** means a **Continuous shift worker** as defined in this award.

21.3 Arrangements for taking leave

- 21.3.1 A week's leave for employees is based on the average number of ordinary hours worked per week under the **employee's** rostering arrangements.
- 21.3.2 When annual leave is taken by an **employee**, the **employer** may require that the leave be taken in accordance with the **employee's** roster.

