

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
Workplace Relations Act 1996

Application to vary Mining Industry Award 2010 (MA000011)
(Section 576H of the Workplace Relations Act 1996
(AM2009/13)

Submission of the Australian Mines and Metals Association
regarding an application to vary the Mining Industry Award 2010 (MA000011)
7 August 2009

INTRODUCTION

- 1 These submissions are filed by the Australian Mines and Metals Association (**AMMA**) in support of its application dated 10 July 2009 to vary the Mining Industry Award 2010 (**Award**). AMMA seeks that the Award be varied in five key respects:
- (a) the insertion of annualised salary provisions that would permit an employee to be paid a salary irrespective of the actual rostered hours worked by the employee in the pay period;
 - (b) the amendment of the hours of work provisions to provide that up to 12 ordinary hours of work per day may be worked by both shift and non-shift workers;
 - (c) the insertion of provisions to expressly provide rostering arrangements for the working of “cycle work”.

- (d) the insertion of a provision to expressly permit handover working arrangements.
 - (e) the insertion of provisions which permit an employer to reasonably require an employee to take annual leave in accordance with roster arrangements.
- 2 In each case, the variations sought reflect arrangements presently operating in practice in the mining industry. Consistent with the requirements of the Award Modernisation Request (**AMR**) and for the reasons set out below, it is submitted that the Award should be varied in the terms sought.

CONTEXT OF THE APPLICATION

- 3 On 19 December 2008 the Australian Industrial Relations Commission (**the Commission**) made the Mining Industry Award 2010 (MA000011) pursuant to the award modernisation process under Part 10A of the *Workplace Relations Act 1996* (**WRA**).
- 4 Section s.576C of the WRA requires the Commission to conduct the award modernisation process in accordance with the AMR.
- 5 Subsequent to the making of the Mining Industry Award 2010, on 1 May 2009 the Deputy Prime Minister varied the AMR to include (inter alia) new paragraphs 33A and 33AA.
- 6 The matters contained in the amended AMR were not considered by the Commission prior to the making of the modern Mining Industry Award on 19 December 2008.

- 7 In a letter dated 7 May 2009 to the Honourable Justice Giudice, the Deputy Prime Minister outlined the purpose of these amendments to the AMR. Specifically addressing the inclusion of industry specific requirements, the Minister advised that:

“The request now provides that the Commission should include terms in modern awards that, as far as possible, allow the continuation of roster arrangements and working hours presently in practice for work undertaken in remote locations. For example, the Mining Industry Award 2010 allows a majority of employees to agree with their employer to work shifts of 12 ordinary working hours. If the Commission is satisfied that most employees currently work these arrangements within the industry, or part of the industry, then the modern award should provide for shifts of 12 ordinary hours to ensure award modernisation reflects established work practices.

The request also makes clear that where a modern award covers remote work, the Commission may include terms providing that an employer may reasonably require employees who work on a roster to take annual leave in a manner that fits in with the roster. Where employees in remote areas work even-time rostering arrangements which include annual leave, the Commission should facilitate the retention of these arrangements.

[emphasis added]

8 The new Paragraph 33AA provides that:

Where a modern award covers work performed in remote locations, the Commission should include terms that permit the roster arrangements and working hours presently operating in practice in those locations to continue after the making of the modern award.

9 The new Paragraph 33A provides that:

'The NES allows a modern award to include terms requiring an employee, or allowing an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable. Where an award covers remote work, a modern award should provide that an employer may reasonably require employees who work on a roster cycle make up of working days (on-duty period) and non-working days (off-duty period) to do either or both of the following:

(i) to take any period or periods of annual leave of the same duration as the on-duty period under the employee's work cycle roster;

(ii) to take annual leave on any day nominated as annual leave as part of the roster cycle.

PROPOSED AWARD VARIATION

10 Each of the proposed variations is necessary to give effect to the requirements of paragraphs 33AA of the AMR. In addition, the proposed variation concerning

requirements to take annual leave is consistent with paragraph 33A. Specifically, this submission demonstrates:

- (a) the prevailing degree of remoteness of mining operations covered by the Mining Industry Award 2010; and
- (b) existing arrangements operating in practice in respect of each of the proposed variations, including the nature of salary arrangements, duration of working hours, roster arrangements and annual leave arrangements.

These issues are addressed in turn below.

REMOTENESS OF MINING OPERATIONS

- 11 A detailed map of Australian Operating Mines published by the Australian Government (Geoscience Australia) which includes locations of mining operation can be found at http://www.ga.gov.au/image_cache/GA11430.pdf . The map confirms that the majority of Australia's mining operations that will be covered by the Mining Industry Award 2010 are located in remote areas.
- 12 Remoteness is defined by proximity to large regional and capital city locations. Remote operations are conducted on a residential or Fly In Fly Out (**FIFO**) basis (or variations such as bus in bus out (**BIBO**) or drive in drive out (**DIDO**)). Remote operations established after the 1980's have largely been established as FIFO operations.
- 13 There have been many academic studies of the Mining Industry. They have universally observed that compressed rosters and 12 hour shifts are common place in the mining industry.

EXISTING OPERATIONAL ARRANGEMENTS

- 14 The Productivity Commission's 2008 report on Multi-Factor Productivity in the Australian Mining Industry¹ found that the introduction of 12 hours shifts was a key factor in labour and capital utilisation in mining at the end of the 20th Century, and is reflective of the increase in production, and the trend towards compressed rosters.
- 15 A 2001 Queensland Government guidance note on remote work acknowledged that in the last 10 to 15 years extended shifts, compressed work weeks and numerous variations in working arrangements have become common place in the Australian mining industry.² Arrangements at remote mine sites involve the extended shifts (usually 12 hours per shift) and compressed rosters (even time or asymmetrical).
- 16 This is consistent with AMMA's review of the arrangements presently operating in the mining operations of its members.
- 17 The State based tables below detail key mining operations and the arrangements currently in place. AMMA submits that the effect of paragraphs 33A and 33AA of the AMR is to require that the Award should include terms that permit these arrangements to continue operating after the making of the Award.

¹ Topp, V., Soames, L., Parham, D. and Bloch, H. 2008, *Productivity in the Mining Industry: Measurement and Interpretation*, Productivity Commission Staff Working Paper, December, 1991.

² Queensland Government, Natural Resources and Mines, 2001, *Guidance Note for Management of Safety and Health Risks associated with Hours of Work Arrangements at Mining Operations*.

18 Information is presented below on a State basis for ease of understanding, except for drilling service providers who operate across a number of site and/or States.

NORTHERN TERRITORY

Operation	Location	Operational Features
BHPB's Groote Eylandt Mining Company (GEMCO) Manganese Ore Operation	NT	Remote site. Combination of GEMCO and labour provided by contractors. Majority of employees work 12 hour shifts. Annual leave taken in proportion to work cycle. All GEMCO employees salaries are annualised and paid in equal instalments
Energy Resources of Australia Ltd's Ranger Mine	NT	Employees work a variety of 12 hour roster arrangements.

QUEENSLAND

Operation	Location	Operational Features
BHPB's Cannington Silver and Lead Operations	Cannington, Qld	Remote Fly in Fly Out site. Combination of BHPB and contractor labour. BHPB and contract employees work 12 hour shifts. BHPB annual leave is taken in proportion to work cycle. BHPB employees salaries are annualised and paid in equal instalments

NEW SOUTH WALES

Operation	Location	Operational Features
Newcrest - Cadia	Orange 260 Km North West from Sydney	Residential site - 100% of workforce work 12 hour shifts (Mill area works 12.25 hour shifts) Most common rosters are work cycles of 4 days on 4 days off; 4 days on 5 days off, 5 days on, 4 days off. Annual leave taken in proportion to work cycle. All employees' salaries are annualised and paid in equal instalments.
Perilya – Broken Hill	Broken Hill	Residential Site - Work is all continuous 12 hour shifts. Annual Leave is taken in proportion to roster.

VICTORIA

Operation	Location	Operational Features
Bendigo Mining's Henty Mine	Bendigo, Victoria	DIDO (drive in drive out) site. 92 employees. All operational employees (66% of total) work 12 hour shifts. Compressed rosters of 5 days on, 5 days off, or 4 days on, 4 days off.

Northgate Minerals' Fosterville mine	Fosterville 160 Km north from Melbourne, 20km east of Bendigo	Residential Site, DIDO. 100% of underground workers work 12 hour shifts, 7 days on 7 days off. Salaries are annualised and paid in equal instalments for all surface maintenance, mill workers and mobile fleet employees.
Northgate Minerals' Stawell Gold mine	Stawell 236 Km west from Melbourne	Residential site, DIDO. Continuous shift workers on 4 days on 4 days off roster. Annual leave in the case of Continuous Shift Workers is taken with the roster cycle, unless an adequate replacement is found by the shift worker to cover for the individual's absence.

TASMANIA

Operation	Location	Operational Features
BHP's Tasmanian Electro Metallurgical Company (TEMCO) Manganese Ferroalloy Plant	Tasmania	Remote location. Combination of BHPB and contractor employees. 63% work 12 hour shifts. Most common work cycles are 2 days on / 2 nights on/ 4 days off x 12 hour shifts; 4 on / 3 off x 10 hour shifts ; 3 on / 2 off / 2 on / 3 off / 2 on / 2 off x 12 hour shifts; and 4 on / 4 off x 12 hour days. Annual leave taken in proportion to work cycle. All BHPB employees salaries are annualised and paid in equal instalments.

Bluestone Mines Tasmania	Renison mine	Residential, DIDO site, all operational employees work 12 hour shifts on a 5 days on, 5 days off roster, annualised salaries paid in equal instalments.
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SOUTH AUSTRALIA

Operation	Location	Operational Features
BHP Olympic Dam	Roxby Downs 572 Km North West of Adelaide	Residential site -77% of direct workforce work 12 hour shifts. 70% of contractor workforce work 12 hour shifts, Most common rosters are 4 on 5 off, rotational 12 hour shifts; 9 on 5 off 12 hour shifts; 8 on 6 off 12 hour shifts and 10 on 4 off 10.2 hour shifts (or combinations thereof). Some mining contractors work Fly in Fly Out two weeks on 1 week off; Annual leave taken in proportion to work cycle. BHPB employees salaries are annualised and paid in equal instalments
Heathgate Resources Beverly Uranium Mine	Beverly, in North East SA	100% FIFO site. Majority of rosters are 8 days on / 6 days off for direct employees. Salary is annualised and paid in equal instalments. Majority of contractor rosters are 2 weeks on / 1 week off.

		All direct employees and contractors' rosters are 12 hour shifts, except day in and day out shifts, due to flight arrival and departure times.
Ozminerals Prominent Hill		100% FIFO site. All employees work 12 hour shifts. Rosters are either 7 days on, 7 days off, or 14 days on, 7 days off. Majority of contractor rosters are 2weeks on / 1 week off. Salary is annualised and paid in equal instalments.

WESTERN AUSTRALIA

Operation	Location	Operational Features
Newcrest Telfer	Telfer Villiage	FIFO site – all site based roles work 12 hour shifts; most common rosters are work cycles of two weeks on one week off; one week on, one week off; 9 days on 5 days off, 8 days on 6 days off (or combination of 9/5/8/6 or 8/6/7/7). Annual leave taken in proportion to work cycle. All employees' salaries are annualised and paid in equal instalments.
BHP Billiton WA Iron Ore Operations	Pilbara region of WA . Port Hedland, and Mount Newman (Mt	Remote sites, continuous operation. Rosters included are 2 weeks on 1 week off FIFO, 9 days on 5 days off, 4 days on 4 days off, 4 days on 3 days off, 8 days on 4 days off, 12 days on 12 days off, 5 days on 2 days off. Many rosters are

	Whaleback) Yandi, Area C, Orebody 23, Orebody 25, Jimblebar, Yarrie,	worked with 12 hours per day. Some are 11, 10, 9 and 8 hours per day. Mining contractors work on FIFO basis. Most common FIFO roster is 14 day on 7 day off. Annual leave taken in proportion to work cycle. Majority of BHPB employees' salaries are annualised and paid in equal instalments
BHP Billiton Nickel West operations	WA Leinster Mount Keith Kalgoorlie Kambalda Kwinana	All sites are remote with the exception of Kwinana Nickel Refinery. Leinster and Mount Keith operations are FIFO sites. All operations are continuous operation. Most common 12 hour shift rosters are 8 day on 6 day off; 14 day on 7 day off; 4 day on 4 day off. Annual leave taken in proportion to work cycle. All BHPB employees' salaries are annualised and paid in equal instalments.
Piacentini's Mineral Sands Operations	Enealbba, Coljarlo, Gin Gin, South West, Picton, Waroona, Stradbroke	Remote sites, 800 employees working 2:1 rosters and 12 hours shifts. A combination of 4 days, 4 nights, 4 off; 2 days, 2 nights, 2 off; and 5 days, 5 nights, 5 off. Require flexibility to annualise salaries.
Rio Tinto's Iron Ore operations	Brockman Marandoo Hope Downs	All operations operate 12 hour shift arrangements. Those that operate solely on a fly in fly out basis do so with a 2 week on 1 week off

	Dampier Yandicoogina Paraburdoo Channar Eastern Range Cape Lambert Pannawonica Tom Price in the Pilbara region of WA	roster cycle. Other sites operate a variety of 12 hour shift roster patterns.
Minara's Murrin Murrin laterite nickel mine	50 km East of Leonora in WA,	Remote FIFO site. 1000+ employees with all employees working 12 hour shifts and compressed rosters. Either 14 days on, 7 days off or 8 days on, 6 days off rosters. Employees are paid annualised salaries.
Argyle Diamonds - Argyle	Argyle Diamond Mine East Kimberly region of WA	Operates on a 12 hour shift system.
Fortescue Metals Group Ltd	Cloud Break Mine	Operates on FIFO basis, 8 days on, 6 days off rosters. Normal working arrangements are 12 hour shifts. Employees are paid annualised salaries.

DRILLING OPERATIONS

Operation	Location	Operational Features
Ensign Australia Pty Ltd	Australia wide	Remote sites, all employees work 12 hours shifts and a compressed even time roster of 3 weeks on, 3 weeks off. Annual leave provided during rostered period off. All employees' salaries are annualised and paid in equal instalments.
MB Century Drilling Co Pty Ltd	Australia wide	Remote sites, all employees work 12 hours shifts and a compressed even time roster of 3 weeks on, 3 weeks off. Annual leave provided during rostered period off.
Atlas Drilling Co Pty Ltd	Australia wide	Remote sites, all employees work 12 hour shifts and a compressed even time roster. Annual leave is provided during the rostered period off.
Weatherford Drilling International (Australia) Pty Ltd	Australia wide	Remote sites, all employees work 12 hour shifts and a compressed even time roster of 3 weeks on, 3 weeks off. Annual leave provided during rostered period off.

REVIEW OF VARIATIONS SOUGHT

19 In each case the variations sought are necessary to permit the above arrangements in remote locations in the mining industry to continue after the modern award comes into operation.

ANNUALISED SALARY

20 Annualised salaries are a universal feature of the modern mining industry. This has been the case in the industry for a great many years and at least since the early to mid 1990's.

21 The payment of annualised salaries results in the employee's entitlements being collated and paid in equal instalments over the year. This practice has benefits to employees in terms of regular known wage levels to assist with budgeting, financial management and when taking annual leave. Employers receive the benefits of simplified payroll processing.

22 In the absence of such a provision in the Award, it may not be possible to pay employees in equal instalments over the course of their work cycle or roster. This is because the entitlements to be paid during periods on-duty will substantially exceed the entitlements to be paid for periods of off-duty. This is particularly the case where extended roster arrangements operate, such as 14 days on followed by 7 days off. Should an employer proceed to pay in equal instalments, it is possible that in any single pay period an employee's entitlements may exceed the wages paid and the employer would be liable to a claim of underpayment of wages.

23 Despite the prevalence of over award payments in the Mining Industry, additional costs will be incurred by the necessity to run dual payroll systems to ensure compliance. The insertion of annualised wage provisions removes the requirement to run dual payroll systems and ensures that the Award reflects long standing practices in the industry, particularly in remote operations where compressed rosters are worked.

24 The proposed Clause 15.A1 is an enabling mechanism for annualised salary. The proposed Clause 15.A.2 protects employees from being disadvantaged where the hours worked do not reflect the basis on which the annualised salary was calculated. The proposed Clause 15A.2 provides a mechanism to ‘unbundle’ the annualised salary and calculate the base rate of pay for NES purposes.

12 HOUR SHIFTS

25 The existing Clause 16 of the Award does not allow the employer to require an employee to work 12 hour shifts. As can be seen by the evidence detailed in paragraphs 14 to 18 above, the most predominant working day in the Mining Industry for mining employees, process operators, maintainers and drilling employees is 12 hours.

26 The effect of the Award as presently drafted would require all employers who are award reliant to negotiate with employees to retain their existing shift arrangements. Existing rostering arrangements may not be permitted to continue under the modern award.

27 The proposed Clause 16.2 (in respect of non-shift workers) and Clause 16.3 (in respect of shift workers) and Clause 16.4(c) (in respect of cycle workers) allow

an employer to require an employee to work a 12 hour shift subject to the other hours of work provisions.

- 28 The proposed Clause 19.2A provides a mechanism to ensure continuity of operation between one 12 hour shift and the next by requiring an employee to provide a shift handover (where required) of reasonable length. This process allows the incoming employee to be informed of issues concerning the work being performed including safety considerations that may be of critical importance to the employees' wellbeing and smooth operation of the task at hand. The practice is customary in most continuous shift operations.

CYCLE WORK

- 29 The Award as drafted does not expressly deal with cycle work. Cycle work is the working of a roster that is comprised of a number of consecutive working days and a number of consecutive non working days. This is also known as a compressed roster, where the ordinary hours of work that fall during the length of the roster cycle are taken into account (compressed into) in determining the obligation to provide 38 hours of employment over the duration of the work cycle.
- 30 As can be seen from the academic review detailed in paragraphs 14 to 15 above and the current operations of AMMA members set out at paragraph 18, cycle work is the predominant form of engagement in the industry, particularly in remote sites. FIFO sites operate under work cycle arrangements virtually universally.

31 The proposed Clause 16.4 enables an employer to continue with current cycle work arrangements and defines the on and off duty periods and allows shifts of up to 12 hours to be worked.

ANNUAL LEAVE

32 In its submissions during the consultation process before the making of the Award, AMMA provided various submissions concerning the different leave arrangements operating in the industry.

33 Where cycle work arrangements are in place, traditional leave clauses require modification to enable existing work place arrangements to continue. An employee working a one week on one week off roster cannot simply take a week of leave in the 'week on', as to do so would ignore the period rostered as non-working days (and effectively double the leave benefit).

34 The prevailing practice is that employees take leave in multiples (or proportions) of the roster cycle. This ensures that the non working period of the cycle is properly considered. In the case of a one week on one week off roster the employee would take two weeks off and have 76 hours leave deducted from their NES entitlement.

35 In some cases, particularly in the drilling industry the annual leave is rostered into the non-working days of the work cycle.

36 The proposed Clause 21.2A provides a mechanism to allow these current annual leave rostering practices to continue in the Award. The proposed Clause 21.3 is designed to address an anomaly in the Award where an employee who takes leave is required to be paid the wages the employee would normally have

received (including shift premiums, allowances and the like) **and** the 17.5% annual leave loading.

- 37 Based on the matters above, AMMA submits that, consistent with the intention of the revised AMR set out at paragraph 7 of this submission, the Commission may reasonably be satisfied that most employees in the mining industry are working the above arrangements in remote locations. Accordingly, the variations proposed are necessary to give effect to paragraph 33AA and 33A of the AMR.

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AMMA

7 August 2009