

# Operations Services Production Agreement

## Record of Meeting



**Date** 9 September 2021  
**Location** Videoconference via Webex  
**Attendees** See Appendix 1  
**Meeting Open:** 10:00am (AEST)  
**Meeting Close:** 11:10am (AEST)

### Agenda

1. Introduction & agenda
2. Continue discussion on current bargaining positions
3. Logistics for next meeting

### Summary

<b>Introduction &amp; Agenda</b>	OS shared the agenda for the meeting
<b>Continued discussion on current bargaining positions</b>	<p>Discussion of the current proposed draft OS Production Agreement continued.</p> <p>The CFMMEU and AWU responded to a number of OS' proposals tabled at the last meeting, including:</p> <ul style="list-style-type: none"><li>• types of Employment,</li><li>• remuneration,</li><li>• hours of work, and</li><li>• termination of employment.</li></ul> <p>The union bargaining representatives did not accept OS' proposals and offered alternative positions for OS' consideration.</p> <p>The CFMMEU and AWU tabled, in line with their proposed scope, that the Agreement include:</p> <ul style="list-style-type: none"><li>• current OS minimum salary rates</li><li>• details of the Company Incentive Program</li></ul> <p>The CFMMEU tabled a new proposal regarding Types of Employment to add a new provision to the Agreement requiring OS to include a term in contracts of employment that specifies the Mine at which an Employee has been engaged to work, and stating that the Mine will be the Employee's ordinary location of work.</p> <p>Details of the proposals tabled and discussed are in <b>Appendix 2</b>.</p> <p>The CFMMEU will table their proposals on all other outstanding matters prior to, or at, the next meeting.</p> <p>OS will respond to all new and revised proposals at the next meeting.</p>
<b>Next Meeting</b>	The next OS Production bargaining meeting has been scheduled for 14 October 2021.

# Operations Services Production Agreement

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Actions		
Union bargaining reps to table outstanding proposals by (or at) the next bargaining meeting in respect of hours of work, allowances, and all other items in their proposed Agreement which they have not yet tabled (Refer Appendix 2).	CFMMEU AWU	14 October 2021
OS to consider and respond to proposals put forward by Union Bargaining Representatives (Refer Appendix 2)	OS	14 October 2021

### Appendix 1

Attendance List	
Shane Roulstone	AWU
Mitch Hughes	CFMMEU QLD
Brodie Allen	Employee Bargaining Representative
Harriet Daniels	Employee Bargaining Representative
Laura Martell	Specialist Employee Relations
Dean Scott	Manager Production
Alli Chauncy	Principal Employee Relations

## Appendix 2

OS Production agreement - Summary of current positions on clauses as at 09 September 2021

# Operations Services Production Agreement – OS summary of current positions on clauses

For meeting on 09 September 2021

Key – OS understanding of current position	
	Agreed.
	No different position indicated by bargaining representatives / somewhat agreed
	Not agreed.

Clause No.	Extract	OS understanding of current position	Position & responses at bargaining meeting on 04 August 2021	Position & responses at bargaining meeting on 09 September 2021
<b>1. Title</b>				
1	This agreement will be known as the <i>Operations Services Production Agreement</i> (" <b>Agreement</b> ").			
<b>2. Coverage</b>				
2.1	Subject to clause 2.2, this Agreement shall cover: (a) OS MCAP Pty Ltd (ACN 626 224 655) (" <b>the Company</b> "); and (b) Employees of the Company employed in the classifications set out in clause 6.4 of this Agreement who undertake production activities on a mining operation (" <b>Employees</b> ").	Not agreed because: • CFMMEU wants to include a reference to Coal; and • AWU also wants a reference to all other mining.		
2.2	Any site specific enterprise agreement that covers and applies to the Company and any Employees working at the specific site(s) will cover and apply to the Company and those Employees to the exclusion of this Agreement.		What is it about this clause that you do you not agree with?  AWU – seeking wording to say any site specific agreement would not see Employee's worse off CFMMEU – not supportive of site specific agreements. This should be the agreement that applies wherever OS is deployed.	
<b>3. Relationship with Other Instruments and the National Employment Standards</b>				
3.1	This Agreement does not incorporate the Company's policies or procedures (notwithstanding any references to any policies or procedures in this Agreement).			
3.2	Subject to clause 2.2, while this Agreement operates in relation to an Employee, no other industrial instrument shall have effect in relation to the Employee.			

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3.3	The National Employment Standards (“ <b>NES</b> ”) apply to all Employees as a minimum standard. Where there is an inconsistency between the NES and a clause of this Agreement, the NES will apply and the clause of this Agreement will not apply, except to the extent that the clause of the Agreement provides for a more beneficial outcome for employees than the NES.			
<b>4. Term of Agreement</b>				
4.1	This Agreement will commence operating seven days after the Agreement is approved by the Fair Work Commission (“ <b>FWC</b> ”).			
4.2	The nominal expiry date of the Agreement will be four years after the date on which the FWC approves the Agreement.	CFMMEU and AWU are seeking a 3 year term.		
4.3	The Agreement will continue to operate past the nominal expiry date until terminated or replaced by another agreement.			
<b>5. Type of employment</b>				
<b>5.1</b>	Employees may be engaged under this Agreement as Full Time Employees, Part Time Employees or Casual Employees.	CFMMEU has requested reference to casual employees be removed		CFMMEU Proposal tabled 09/09: Employees may be engaged under this Agreement as Full Time Employees or Part Time Employees. At the time of engagement, the Company will outline which mine that the Employee is engaged to carry out their duties in the employee's letter of offer, and that mine will be the Employee's ordinary location of work.  OS to consider and respond.
5.2(a)	A Full Time Employee is an Employee who is employed to work ordinary hours of work as follows: (a) in the case of an Employee to whom the <i>Mining Industry Award 2020</i> would have applied but for the operation of this Agreement— an average of 38 ordinary hours per week, averaged over their roster cycle; or [...]	CFMMEU and AWU want 35 hours not 38.		
5.2(b)	A Full Time Employee is an Employee who is employed to work ordinary hours of work as follows: [...] (b) in the case of any other Employee – an average of 35 ordinary hours per week, averaged over their roster cycle.			

Clause No.	Extract	OS understanding of current position	Position & responses at bargaining meeting on 04 August 2021	Position & responses at bargaining meeting on 09 September 2021
5.3(a)	A Part Time Employee is an Employee who is not a Casual Employee and is employed to work less than the following number of ordinary hours per week: (a) in the case of an Employee to whom the <i>Mining Industry Award 2020</i> would have applied but for the operation of this Agreement— an average of 38 ordinary hours per week, averaged over their roster cycle; or [...]	CFMMEU and AWU want reference to proportional benefits and less than 35 hours not 38. CFMMEU want overtime for work in excess of agreed hours.		
5.3(b)	A Part Time Employee is an Employee who is not a Casual Employee and is employed to work less than the following number of ordinary hours per week: [...] (b) in the case of any other Employee – an average of 35 ordinary hours per week, averaged over their roster cycle.	CFMMEU and AWU want reference to proportional benefits. CFMMEU want overtime for work in excess of agreed hours.	Do the union bargaining reps want the clause in CFMMEU draft on proportional benefits? If there are concessions by the unions in respect of this clause, in particular cease pressing claim for 35hrs, OS will look to include a provision for overtime work in excess of agreed hours. If agreed, OS will provide a draft clause  AWU – will consider CFMMEU – will consider	CFMMEU & AWU Do not accept OS' proposal on the basis that they seek to maintain their claim for 35hr week. Should the Company accept this proposal, then the Union Bargaining reps would consider agreeing to the casual clause/s which OS has proposed.  OS to consider and respond.
5.4	Each Part Time Employee's rostered hours of work, including the days when they will work and their starting and finishing times, will be as agreed in writing between the Company and the Part Time Employee from time to time.			
5.5	A Casual Employee is an Employee who is engaged and paid as a Casual Employee.		Opposed to any reference to casuals being included in the Agreement	
5.6 to 5.9	5.6 A regular Casual Employee may elect to have their employment converted to full time or part time employment if the employment is to continue beyond the date when they qualify to be a regular Casual Employee. A "regular Casual Employee" for the purpose of this Agreement is a Casual Employee who has in any preceding period of six months worked a pattern of hours on an ongoing basis which, without significant adjustment, the Employee could continue to perform as a Full Time Employee or Part Time Employee under the provisions of this Agreement. 5.7 The regular Casual Employee must give notice in writing to the Company at least four weeks prior to the Employee attaining such period of six months that they seek to elect to convert their employment to full time or part time employment. The Company must respond within four weeks of receiving such notice whether it consents to or refuses the election, but must not unreasonably so refuse. 5.8 Where it is agreed that the regular Casual Employee will be converted to full time or part time employment, this agreement will be recorded in writing, including recording whether the Casual Employee is converting to full time or part time employment and, if the Casual Employee is converting to part time employment, recording the matters set out in clause 5.4. 5.9 Once a regular Casual Employee has elected to become and been converted to a Full Time or Part Time Employee, the Employee may			

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	only revert to casual employment by written agreement with the Company.												
6. Duties													
6.1	Employees are required to undertake all duties as reasonably directed by the Company that are within their skill and competence in accordance with safe working practices.	CFMMEU want a reference to no promoting deskilling, as well as notice requirements for travel away from ordinary location.	Is de-skilling the only area of disagreement? CFMMEU – will consider										
6.2	Employees will undertake training aimed at maintaining, enhancing or broadening their work skills and work performance as required by the Company, and will teach work skills to others as required.	CFMMEU wants to: <ul style="list-style-type: none"><li>delete reference to training others; and</li><li>include wording for notice and payments when training is away from work location.</li></ul> AWU has proposed limiting training to other OS employees.	What notice period does the CFMMEU want for training away from ordinary location? Minimum two weeks  How would this work for those without an ordinary location? The CFMMEU's proposed agreement has a scope where they would be provided with an ordinary location.										
6.3	Organisational requirements may necessitate Employees transferring to other positions, operations, or locations. Reasonable notice will be provided in these circumstances. Terms and conditions of employment will be reviewed in light of any change in responsibilities in the event of a transfer, but will remain at least as beneficial as set out in this Agreement.		CFMMEU NSW would never agree to any transfer, anywhere.  AWU not opposed to transfers provided there is adequate protection for Employees (ie by agreement)										
6.4	Employees will be placed in one of the following classifications according to their responsibilities from time to time: <table><tr><th>Operation Coverage</th><th>Classification</th><th>Description</th></tr><tr><td>Non-Coal Operations</td><td>Production Technician</td><td>Operating heavy mobile equipment</td></tr><tr><td>Coal Operations</td><td>Production Technician</td><td>Operating heavy mobile equipment</td></tr></table> Trainee Production Technicians in Non-Coal Operations or Coal Operations may be employed by the Company under this Agreement.	Operation Coverage	Classification	Description	Non-Coal Operations	Production Technician	Operating heavy mobile equipment	Coal Operations	Production Technician	Operating heavy mobile equipment	No union party has provided their proposed classification structure OS requests unions to provide proposed structure for the next meeting.	OS formally requests proposals from both unions in respect of classifications at the next meeting	CFMMEU Propose the following classifications in line with their proposed scope: <ul style="list-style-type: none"><li>Production</li><li>Maintenance trade; and</li><li>Maintenance non-trade</li></ul> AWU Propose the following classifications: <ul style="list-style-type: none"><li>Operator</li><li>Technicians</li><li>Maintainers; and</li><li>Tradespeople</li></ul>
Operation Coverage	Classification	Description											
Non-Coal Operations	Production Technician	Operating heavy mobile equipment											
Coal Operations	Production Technician	Operating heavy mobile equipment											
6.5	An Employee's classification under clause 6.4 does not limit the duties that an Employee may be required to perform in accordance with clause 6.1.												

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<b>7. Remuneration</b>				
7.1	Full Time and Part Time Employees will be paid an annualised salary (" <b>Annual Salary</b> ").			
7.2-7.3	<p>7.2 The Annual Salary payable under this Agreement to a Full-Time Employee or Part-Time Employee for working any roster will be the total of the following amounts:</p> <p>(a) the total amount of the remuneration that would have been payable to the Employee under the relevant modern award for working the same roster; and</p> <p>(b) an additional amount comprising 5% of the amount calculated under subclause 7.2(a), being an amount paid to give effect to the "Above Award Guarantee".</p> <p>For the purposes of this Agreement:</p> <p>(i) the "relevant modern award" in relation to any Employee is the modern award that would have applied to that Employee if this Agreement did not apply to that Employee;</p> <p>(ii) the "Above Award Guarantee" is a guarantee that the Annual Salary payable under this Agreement to every Full Time and Part Time Employee will be 105% of the amount that would have been payable to an Employee under the relevant modern award for working the roster on which they are working.</p> <p>7.3 For the avoidance of doubt:</p> <p>(a) the Above Award Guarantee also applies to the Annual Salary that is payable to any Trainee employed under this Agreement; and</p> <p>(b) an Employee's Annual Salary includes compensation for any allowances, penalties or payments that would have been applicable under the relevant modern award to the roster that the Employee is working. This includes compensation for working on rosters which cover public holidays, afternoon shifts and night shifts, and any other allowances, penalties or payments applicable to the Employee's roster under the relevant modern award. For the avoidance of doubt, all of these amounts are to be included in the calculation of the remuneration referred to in clause 7.2(a).</p>	CFMMEU and AWU claims regarding wages yet to be tabled.	OS formally requests the proposals from all unions in respect of remuneration at the next meeting	<p>AWU Proposes to include the minimum salary rates that OS employees are currently receiving to be included in the agreement. That is, the current annualized salary paid to OS employees working on their 38hr week roster pattern to be included, as a minimum, in the Agreement. (This is not a concession on their claim for a 35hr week). In addition, further detail on the Company Incentive Scheme to be included in the body of the Agreement.</p> <p>CFMMEU Propose a similar position on minimum rates being included in the Agreement – that is, what is currently being paid to OS employees in QLD should be in the agreement as a minimum rate, including allowances (ie critical skills). In line with the CFMMEUs proposed scope.</p> <p>In regards to bonus, the CFMMEU propose to have the bonus policy included into the body of the Agreement – however would require further discussion around the timing (ie requirement to be Employed by 01 September to qualify for payment)</p> <p>OS to consider and respond.</p>
7.4	Any un-rostered overtime worked by Full Time or Part Time Employees will be paid at double time for each hour of un-rostered overtime. The hourly rate for the purpose of calculating the un-rostered overtime rate will be calculated by dividing the Annual Salary that is payable to the Employee by the number of rostered hours per annum for the Employee's roster. Alternatively, a Full Time or Part Time Employee and the Company may agree in writing to the Employee taking time off instead of being paid for a particular amount of un-rostered overtime that has been worked by the Employee.			
7.5	<p>Casual Employees will be paid as follows:</p> <p>(a) An hourly rate, plus an additional and distinct casual loading of 25%</p>			



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	<p>for each of their rostered hours of work.</p> <p>(b) For the purpose of this clause 7.5, each Casual Employee's hourly rate will be calculated as follows: (Annual Salary for the Comparator Employee) divided by (Total rostered hours of work for the Comparator Employee), where the "Comparator Employee" is a Full Time Employee who is doing the same work on the same roster as the Casual Employee.</p> <p>(c) Any un-rostered overtime worked by a Casual Employee will be paid at double time, plus an additional and distinct casual loading of 25%.</p> <p>(d) The 25% casual loading referred to in clauses 7.5(a) and (c) is paid instead, and in lieu, of annual leave, paid personal/carer's leave, notice of termination of employment, redundancy benefits and any other benefits of full time or part time employment.</p> <p>(e) On each occasion a Casual Employee is required to attend work the Casual Employee will be paid for a minimum of four hours work.</p> <p>(f) If the amount payable to any Casual Employee under subclauses 7.5(a) to (e) for any casual engagement is less than 105% of the amount that would have been payable to that Casual Employee under the relevant modern award for that engagement, then the amount paid to the Casual Employee for that engagement shall be increased so as to make up the difference.</p>			
7.6	Remuneration will be paid at intervals determined by the Company (up to monthly), and is currently fortnightly in arrears.		<p>OS will agree to remove the reference to 'up to monthly' if the union bargaining representatives agree to the OS Production salary guarantee clause</p> <p>CFMMEU / AWU – will consider</p>	<p>CFMMEU Don't agree to the salary guarantee clause, and maintain position that words 'up to monthly' be removed.</p> <p>AWU Propose 'will be paid' fortnightly in arrears</p> <p>OS to consider and respond</p>
7.7	Payment will be by electronic funds transfer to a bank account in Australia nominated by the Employee.			
7.8	Employees may be eligible to participate in the Company Incentive Program, as amended from time to time. The Company reserves the right in its sole discretion to cancel, replace, or make any variations to any such scheme at any time.		No agreement on the basis that the union bargaining reps do not support the Company Incentive Program.	
7.9	Where an overpayment of salary or entitlements has occurred, Employees must repay the overpayment within a reasonable period of time. Where the overpayment is not repaid within a reasonable period of time, the Company is entitled to deduct and retain any overpayments from the Employee's pay, including from termination payments, to the fullest extent permitted by law.		<p>CFMMEU - Not opposed to the recoupment of overpayment loans, but do not agree with the wording around the process of recoupment.</p> <p>OS requests CFMMEU to provide wording in respect of the overpayment recovery process</p>	<p>CFMMEU proposal tabled 09/09:</p> <p>Employees authorise the Company to deduct from any wages or entitlements payable or owing to the Employee, any overpayments made in error by the Company to the Employee upon the Company providing written notification of an overpayment to the Employee.</p> <p>Overpayments will be deducted by a reasonable amount, as agreed between the</p>

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				<p>Company and Employee, over a reasonable period of time.</p> <p>The Company commits that where there is an acknowledged underpayment to an Employee or Employees this will be rectified and paid to the effected Employee/s as soon as possible, which will not extend past the next business day where possible, and where this cannot be achieved, the maximum period will be the next pay run."</p> <p>OS to consider and respond.</p>
<b>8. Superannuation</b>				
8.1	Employees are allowed a personal choice of complying superannuation fund, to receive superannuation contributions on their behalf. Should an Employee elect not to choose their own complying superannuation fund, the Company's default superannuation fund shall be used. The Company reserves the right to change its default fund at any time. The Company's default superannuation fund will be a fund which offers a MySuper product.	Clause to be reviewed in light of the "superannuation stapling" reforms made by the <i>Treasury Laws Amendment (Your Future, Your Super) Act 2021</i> , which commenced operation on 23 June 2021.	<p>OS' revised position:</p> <p>Employees are allowed a personal choice of complying superannuation fund, to receive superannuation contributions on their behalf. If contributions are to be made by the Company to a default superannuation fund, the default fund will be a fund which offers a MySuper product. The Company reserves the right to change its default fund at any time.</p>	
8.2	The Company's contribution on behalf of Employees will be in accordance with the <i>Superannuation Guarantee (Administration) Act 1992</i> , as varied from time to time.			
8.3	An Employee can request, and the Company may agree, that the Employee will forgo part of their Annual Salary otherwise payable under this Agreement and in lieu pay this amount into the Employee's nominated superannuation fund.			
<b>9. Hours of Work</b>				
9.1	The Company expects that an Employee's work will usually be completed in their rostered hours.			
9.2	An Employee's rostered hours of work are averaged across their roster cycle, excluding handovers.	CFMMEU & AWU have "including" handovers		

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9.3	An Employee's rostered hours of work are inclusive of an Employee's ordinary hours and rostered overtime each week.			
9.4	By working these hours, Employees are acknowledging that the requirement to work the rostered hours of work is reasonable having regard to, among other things, the operational requirements of the workplace and the roster arrangements. The Annual Salary is calculated on the basis that Employees will work these hours.		CFMMEU seek a cap on the number of shifts that can be worked in a row. There is currently no max/min limit of shifts/days.	
9.5	<p>The Company shall determine each Employee's roster, including the days and hours of work, and starting and finishing times from time to time, and may change any such rosters, days and hours of work or starting and finishing times, provided that:</p> <p>(a) an Employee shall not be rostered to work more than 12.5 hours in any one shift, and will have a minimum break of 10 consecutive hours between shifts; and</p> <p>(b) the Company will provide an Employee with one week's notice of any change to an Employee's place on a roster, unless otherwise agreed with the Employee.</p>	<p>OS has agreed to include the requirements in clause 9.5(a), but otherwise has not agreed to the proposals put forward by the CFMMEU and AWU.</p> <p>CFMMEU want 4 weeks' notice of change if changing to non-continuous roster and overtime where less notice is given. CFMMEU want new rosters only following consultation and agreement with majority of affected employees.</p>	OS formally requests the proposals from all unions in respect of hours of work and rosters (S&F times, Process, Current rosters defined)	CFMMEU to provide their position in respect of hours of work and rosters (CFMMEU clause 9.3, 9.6 and 9.7) by/at the next meeting
9.6	Employees are entitled to meal and rest breaks up to a total of 60 minutes per day. The meal break and rest breaks shall be taken at times prescribed by the Company having regard to safety, operational and production requirements.	A total of 60 minutes of breaks per day satisfies the requested 30 minute break per 5 working hours.	<p>CFMMEU tabled revised position on 29/06: Employees are entitled to meal and rest breaks of 30 minutes for every 5 hours worked. The meal break and rest breaks shall be taken at times prescribed by the Company having regard to safety, operational and production requirements. Employees will not be required to work more than 5 hours without a meal and rest break.</p> <p>OS will accept the CFMMEU's proposed wording in respect of this clause if there is provision added to extend the break in the event of an emergency.</p> <p>CFMMEU / AWU – will consider</p>	<p>CFMMEU &amp; AWU are open to accepting OS' proposal to include a provision for extending the break in the event of an Emergency.</p> <p>OS to provide proposed wording</p>
<b>10. Public holidays</b>				
10	Employees acknowledge that, from time to time, in accordance with their applicable roster, they may be requested to work on a public holiday. Employees acknowledge that this is reasonable based on the Company's operational requirements. The Annual Salary includes compensation in recognition of the need for Employees to work on public holidays. No separate payment will be made where a public holiday falls during a rostered day off.	<p>CFMMEU and AWU proposals</p> <p>CFMMEU want Christmas / Boxing Day to be non-working days. The Company may call for volunteers to work Christmas / Boxing Day</p>		
<b>11. Annual leave</b>				

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11.1	Annual leave entitlements will be provided for in accordance with the NES.		<p>CFMMEU tabled revised position on 29/06:</p> <ul style="list-style-type: none"> <li>Annual Leave may be taken at any time provided that reasonable notice is given by the employee.</li> <li>Once an employee makes application for Annual Leave, the Company must respond, in writing, approving or rejecting the Annual Leave. Where the Annual Leave application is rejected the Company must provide the employee with the reasons why the application was rejected, in writing.</li> </ul> <p>In response to revised wording tabled by CFMMEU on 29/06:</p> <p>OS' current practice is to respond to leave requests in a timely manner, and will continue to do so for its employees, but cannot agree to any specific timeframe, or reference to a timeframe. To do so may reduce flexibility and not enable OS to account for individual circumstances.</p> <p>With respect to applications and rejections being made in writing, Employees are expected to first discuss their leave requests with their line leader, followed by the request being submitted via the SAP portal. If a leader is unable to approve leave, they will discuss the reasons why with the employee directly. This process which is driven by productive communications between employees and their line leaders has, and continues to, work for OS and its employees. Additional requirements around providing written responses reduces flexibility and unnecessarily adds administrative burden to OS.</p>	
11.2	Employees (other than Casual Employees) are entitled to annual leave, in addition to the amount provided for in the NES, such that the employee's total entitlement to annual leave pursuant to the NES and this Agreement for each year of service is a cumulative total of 5 weeks.			
11.3	<p>An Employee who:</p> <p>(a) is a seven day roster Employee (an Employee who over the roster cycle, may be rostered to work shifts on any of the seven days of the week); or</p> <p>(b) works a roster which requires ordinary shifts on public holidays and</p>			

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	not less than 272 ordinary hours per year on Sundays, is a shiftworker for the purpose of the NES and entitled annually to an additional week of annual leave in addition to clause 11.2, being a cumulative total of 6 weeks.			
11.4	Annual leave taken during employment and paid out on termination of employment is paid at an Employee's Annual Salary rate.	CFMMEU want this to be paid including bonus	OS confirms current practice is that all paid leave counts as services for the OS Short Term Incentive scheme, however maintains its position that this scheme is managed via policy	
11.5	An Employee and the Company may agree for the Employee to "cash out" amounts of annual leave provided that: (a) the cashing out would not result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; (b) each occasion of cashing out is by a separate agreement in writing between the Company and the Employee; and (c) cashed out annual leave is paid at the Employee's Annual Salary rate.			
<b>12. Personal/carer's leave</b>				
12.1	Personal/carer's leave entitlement will be provided for in accordance with the NES. In addition, Full Time and Part Time Employees will be credited with their annual entitlement to personal/carer's leave under the NES on commencing employment and then on each anniversary of commencement.	Agreed that entitlement will accrue on commencement of employment and each anniversary thereafter. CFMMEU QLD want an additional day of paid leave for travel. AWU want 15 day entitlement.	CFMMEU tabled revised position on 29/06: Personal/ Carer's leave will be paid out on termination of employment (except where the termination is a result of serious misconduct, or the employee is within probation) and is paid at the Employee's Annual Salary rate.  OS is prepared to consider including a provision in the proposed Agreement for payment for any accrued but untaken personal/carers leave entitlements upon termination of employment in limited circumstances but will not finalise our position on this until such time that all outstanding proposals are tabled by the Union Bargaining Representatives.  Unions to clarify what the additional days travel is meant to cover?  CFMMEU/AWU – distance between the Employee's work location and home or wherever they need to go to provide the care.	

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12.2	Personal/carer's leave is paid at an Employee's Annual Salary rate.	CFMMEU QLD want any bonus to be included when calculating payment.	OS confirms current practice is that all paid leave counts as services for the OS Short Term Incentive scheme, however maintains its position that this scheme is managed via policy	
<b>13. Compassionate leave</b>				
13.1	Compassionate leave entitlements will be provided for in accordance with the NES.	CFMMEU and AWU want an additional day of paid leave for travel to an employee's residence.		
13.2	Compassionate leave is paid at an Employee's Annual Salary rate.	CFMMEU QLD want any bonus to be included when calculating payment.	OS confirms current practice is that all paid leave counts as services for the OS Short Term Incentive scheme, however maintains its position that this scheme is managed via policy	
<b>14. Parental leave</b>				
14	Employees (other than Casual Employees) with at least 3 months' continuous service are entitled to unpaid parental leave at least in accordance with the NES. <i>Note:</i> The Company has policies that provide for parental leave on terms that in some respects are more generous than the NES, including paid parental leave for primary caregivers and secondary caregivers. This clause does not affect the operation of those policies, as amended from time to time.	CFMMEU want the current policy provision to be the substance of the agreement clause.		
<b>15. Long service leave</b>				
15.1	15.1 Long service leave is in accordance with applicable legislation. 15.2 Long Service leave accrues and must be taken subject to relevant legislation and the Company policies as amended from time to time.	AWU seeking 7yrs	CFMMEU seek wording as to how this will be paid (ie paid as if at work)  Agreed  OS' proposed position – 15.3 Long Service Leave is paid at an Employee's Annual Salary rate  Is the AWU still pressing 7yrs? AWU – yes, that is our preferred position	
<b>16. Community Service Leave</b>				

Clause No.	Extract	OS understanding of current position	Position & responses at bargaining meeting on 04 August 2021	Position & responses at bargaining meeting on 09 September 2021
16	Community service leave entitlements will be provided for in accordance with the NES.	CFMMEU and AWU want additional entitlements above the NES be included in the agreement.		
<b>17. Leave to deal with Family and Domestic Violence</b>				
17.1	<b>Entitlement to unpaid leave</b> Unless otherwise agreed, an Employee is entitled to 5 days' unpaid leave in each 12 month period to deal with family and domestic violence. The leave is available in full at the start of each 12 month period and does not accumulate from year to year. The leave does not count as service but does not break the Employee's continuity of service. <i>Note:</i> The Company has policies that provide for family and domestic violence leave on terms that in some respects are more generous than the NES, including paid family and domestic violence leave. This clause does not affect the operation of those policies, as amended from time to time.			
17.2	<b>Taking unpaid leave</b> An Employee may take unpaid leave to deal with family and domestic violence if the Employee is experiencing family and domestic violence, and needs to do something to deal with the impact of the family and domestic violence and it is impractical for the Employee to do that thing outside their rostered hours of work.			
17.3	<b>Notice and evidence requirements</b> (a) An Employee must notify the Company as soon as practicable of the taking of leave under clause 17, and the expected period of the leave. (b) If required by the Company, the Employee must give the Company evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 17.2. (c) An Employee must comply with clause 17 to access the entitlement.			
<b>18. Issue Resolution Procedure</b>				
18.1	18.1 This clause sets out the process for resolving issues which relate to: (a) a matter arising under this Agreement; or (b) the NES.	CFMMEU want all matters of employment to be included		
18.2 – 18.5	18.2 Where an issue under clause 18.1 arises which the Company or an Employee seeks to be resolved, the issue must first be referred for discussion between the Employee and their immediate Supervisor to attempt to resolve the issue.  18.3 If the issue remains unresolved, it may be referred for discussion between the Employee and the Employee's Superintendent.			



Clause No.	Extract	OS understanding of current position	Position & responses at bargaining meeting on 04 August 2021	Position & responses at bargaining meeting on 09 September 2021
	<p>18.4 If the issue is still not resolved, it may be referred for discussion between the Employee and the Employee's Departmental Manager</p> <p>18.5 Discussions in accordance with clauses 18.2, 18.3 and 18.4 will be held as soon as reasonably practicable.</p>			
18.6	By agreement, the Company and the Employee may bypass any of the steps in clauses 18.3 or 18.4 in the interests of speedy resolution of the issue.	CFMMEU want exceptions where the matter affects majority of Employees		
18.7	If the issue resolution processes in clauses 18.2, 18.3 and 18.4 have genuinely been exhausted (with the exception of the processes in clauses 18.3 or 18.4 if there was an agreement to bypass any of these steps), and the issue is still unable to be resolved at the workplace level, either party (or its representative) may refer the matter to the FWC for conciliation. If the matter remains unresolved, it can be referred to the FWC for arbitration by consent of both parties involved.	CFMMEU seek arbitration without agreement	Seeking additional payment for Employees to attend proceedings in the FWC	
18.8	Either the Employee or the Company may have a representative to assist at any stage of this process.			
<b>19. Individual flexibility</b>				
19	The Company and individual Employees may agree to make an individual flexibility arrangement, in accordance with the model flexibility term prescribed by the <i>Fair Work Regulations 2009</i> . The model flexibility term is incorporated into this Agreement.	CFMMEU QLD has put forward an alternative clause.		
<b>20. Management of change / Consultation</b>				
20	<p>In the event that the Company makes:</p> <p>(a) a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or</p> <p>(b) proposes to introduce a change to the regular roster or ordinary hours of work of Employees,</p> <p>the Company will consult with the relevant Employees in accordance with the model consultation term prescribed by the <i>Fair Work Regulations 2009</i>, which is incorporated into this Agreement.</p>		<p>If OS inserted the model clause, would the bargaining reps drop all other claims for a comprehensive agreement?</p> <p>CFMMEU / AWU – No</p>	
<b>21. Redundancy</b>				
N/A	N/A	<p>CFMMEU QLD are seeking a selection process for forced redundancies.</p> <p>AWU wants voluntary redundancies in the first instance.</p>	<p>CFMMEU tabled revised position on 29/06:</p> <p>To ensure that the Company can continue to operate in the most productive and efficient</p>	



Clause No.	Extract	OS understanding of current position	Position & responses at bargaining meeting on 04 August 2021	Position & responses at bargaining meeting on 09 September 2021
		CFMMEU NSW wants redeployment only within the Hunter Valley coalfields.	<p>manner all employees from within the work area where a surplus exists will be interviewed to determine the employees to be retained or retrenched. The selection method for forced redundancies will take into consideration the following:</p> <ul style="list-style-type: none"> <li>a) necessary skills mix required by the business;</li> <li>b) individual skills and proficiency in them;</li> <li>c) employment record/ service; 15</li> <li>d) cases where unsatisfactory performance has been identified and is being managed.</li> </ul> <p>OS has already responded to the CFMMEU's proposed clause regarding Redundancy on 15 March 2021. OS position on this does not change in light of the alternative wording proposed by the CFMMEU.</p>	
21.1	<b>Definition of redundancy</b> (a) An Employee is made redundant where an Employee's employment is terminated at the Company's initiative: <ul style="list-style-type: none"> <li>(i) because the Company no longer requires the job done by the Employee to be done by anyone except where this is due to the ordinary and customary turnover of labour; or</li> <li>(ii) because of insolvency or bankruptcy of the Company.</li> </ul> (b) This clause does not apply to Employees engaged for a fixed term or a specified task or to Casual Employees.			
21.2(a)	Except where clause 21.3 applies, when terminations of employment occur due to redundancy, the Employees terminated are entitled to severance pay equal to three weeks' pay (paid at an Employee's Annual Salary rate) for each completed year of employment, up to a maximum of 30 weeks' pay.	3 weeks per year of service agreed. CFMMEU QLD wants any bonus be included when calculating payment.	CFMMEU & AWU take issue with the cap of 30 weeks	
21.(2)(b)	Regardless of length of employment, the minimum payment due to Employees under clause 21.2(a) is four weeks' pay.			
21.3	<b>Exemption</b> The Company is not liable for the payment in clauses 21.2 if the Company obtains, or causes to be made available for the Employee, work: <ul style="list-style-type: none"> <li>(a) that the Employee is competent to perform;</li> <li>(b) in a position that carries the same or a higher classification rate of pay than the Employee's previous position;</li> <li>(c) that can reasonably be regarded as permanent; and</li> <li>(d) allows the Employee to reside in the same general locality as the Employee's previous residence.</li> </ul>	Agreed, subject to union's position on proposals put forward on redeployment as summarised above.	CFMMEU NSW take issue with 21.3 (d). MAC is a residential deployment – cannot exempt redundancy entitlements if transferred away from Mt Arthur	

Clause No.	Extract	OS understanding of current position	Position & responses at bargaining meeting on 04 August 2021	Position & responses at bargaining meeting on 09 September 2021
21.4	<b>Variation of severance pay</b> Despite anything in this clause, the Company may make application to the FWC to be granted relief from the obligation to make a payment pursuant to clause 21.2.			
<b>22. Termination of Employment</b>				
22.1	An Employee may resign from his or her employment with the Company by giving one week's written notice to the Company.			
22.2	Subject to clause 22.3, the Company may terminate the employment of a Full Time or Part Time Employee by giving the Employee four weeks' written notice or by payment by the Company in lieu of all or part of that notice.			
<b>22.3</b>	The Company may employ any Full Time or Part Time Employee on probation. In that case, the period of probation will begin on the commencement of employment and will continue for such period as is notified by the Company in advance in writing. During the period of probation, the Company may terminate the probationary Employee's employment by giving one week's written notice or payment by the Company in lieu of all or part of that notice.		<p>Period of probation should be capped at 'up to 6 months'</p> <p>Agreed, if the bargaining reps consider their position and cease to press all other claims in respect of this clause.</p> <p>OS' proposed position would be:</p> <p>22.3 The Company may employ any Full Time or Part Time Employee on probation. In that case, the period of probation will begin on the commencement of employment and will continue for a <u>period of up to 6 months (excluding any periods of unpaid leave or unauthorised absences)</u> as is notified by the Company in advance in writing. During the period of probation, the Company may terminate the probationary Employee's employment by giving one week's written notice or payment by the Company in lieu of all or part of that notice.</p> <p>CFMMEU / A/WU – will consider</p>	
22.4	The period of notice to be given by the Company to Full Time or Part Time Employees under clause 22.2 shall increase by one week if the Employee is over 45 years old and has completed more than two years continuous service with the Company.			
22.5	The Company may terminate the employment of a Casual Employee by giving one hour's notice of termination or payment by the Company in lieu of that notice.			CFMMEU - Agreed on the basis that their proposal at 5.3b is accepted

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22.6	The Company may dismiss an Employee without notice for any serious misconduct, and in such case the Employee's remuneration shall be payable only up to the time of dismissal.		<p>AWU concerns over the interpretation of "serious". Would prefer "gross" as per the Award.</p> <p>OS does not see any need to making this change as 'serious misconduct' is already defined in the Fair Work Regulations 2009.</p> <p>What is covered by 'gross misconduct' that is not covered by 'serious misconduct'?</p> <p>AWU – the word 'serious' opens it up to lower level matters. ie failure to turn up to shift on time – it is serious, but not gross. Gross identifies the level of conduct required to go to termination.</p>	
<b>23. Better of Overall</b>				
23	It is the intention that every Employee covered by this Agreement will be better off overall than if a relevant modern award applied to their employment, including by means of the Above Award Guarantee		<p>What does it matter if this clause appears in a safety net EA or any other form of EA, doesn't it have the same effect in either?</p> <p>CFMMEU – issues with wording re 'above award guarantee'. CFMMEU to consider further.</p>	
<b>24. No further claims</b>				
24	This Agreement is a comprehensive and full settlement of all Employee enterprise bargaining claims for the duration of this Agreement unless otherwise permitted by the <i>Fair Work Act 2009</i> (Cth).			

#### CFMMEU Draft Agreement – Outstanding Claims

CFMMEU Draft Agreement Clause Number
10.14 Overtime Rates
18.5 Travel obligations for mid-swing days off to be discussed
20.4 Accident Pay
25.2 Process for adding more locations and/or changing locations
25.11 Accommodation Allowance