



Proposed Agreement and Black Coal Mining Industry Award and NES

The tables below summarise and explain the terms of the Operations Services Maintenance Agreement (**Proposed Agreement**) as compared with the Black Coal Mining Award 2020 (**Award**) and the National Employment Standards (**NES**) contained in the Fair Work Act 2009 (Cth) (**FW Act**). The table below is intended to assist you understanding the Proposed Agreement and must be read in conjunction with the Proposed Agreement, the Award and the NES.

The table below is intended to assist you understanding the Proposed Agreement and must be read in conjunction with the Proposed Agreement, the Award and the NES.

Understanding this table

In this table, we compare each term of the Proposed Agreement against relevant provisions in the Award and identify whether the term in the Proposed Agreement is:

- More beneficial than the Award;
- Less beneficial than the Award;
- Substantially the same as the Award; and
- Different to the Award.

We also compare each relevant term of the Proposed Agreement against the NES and identify whether the term is consistent with the NES. It is important that you understand that even if, at any time, a clause in the Proposed Agreement is inconsistent with the NES and the NES provides for a higher benefit, the Proposed Agreement term will not apply except to the extent that it is more beneficial for employees.

If you would like any further information, or you need any assistance in understanding the summary below, please contact your Line Leader.

Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
1 TITLE	This agreement will be known as the <i>Operations Services Maintenance Agreement</i> (" <b>Agreement</b> ").		<b>1. Title and commencement</b>  1.1 This award is the Black Coal Mining Industry Award 2020.  1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.  1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.	<b>Different to Award</b>  This is a machinery provision of the Proposed Agreement and confirms the title of the Proposed Agreement.
2 COVERAGE	2.1 This Agreement shall cover:  (a) OS ACPM Pty Ltd (ACN 623 848 895) (" <b>the Company</b> ").  (b) Employees of the Company employed in the classifications set out in Appendix 1 of this Agreement who undertake maintenance activities on a mining operation (" <b>Employees</b> "). "Mining operation" in this clause includes Port operations in Western Australia which service mining operations.  (c) Any union covered by this agreement pursuant to section 183 of the Fair Work Act 2009 (Cth) (" <b>FW Act</b> ").		<b>4. Coverage</b>  4.1 This award covers:  (a) employers of coal mining employees as defined in clause 4.1(b); and  (b) coal mining employees.  Coal mining employees are:  (i) employees who are employed in the black coal mining industry by an employer engaged in the black coal mining industry, whose duties are directly connected with the day to day operation of a black coal mine and who are employed in a classification or class of work in Schedule A—Production and Engineering Employees or Schedule B—Staff Employees of this award;  (ii) employees who are employed in the black coal mining industry, whose duties are carried out at or about a place where black coal is mined and are directly connected with the day to day operation of a black coal mine and who are employed in a classification or class of work in Schedule A—Production and Engineering Employees or Schedule B—Staff Employees of this award; and  (iii) employees employed by a mines rescue service.  4.2 For the purposes of this award, black coal mining industry has the meaning applied by the courts and industrial tribunals, including the Coal Industry Tribunal. Subject to the foregoing, the black coal mining industry includes:  (a) the extraction or mining of black coal on a coal mining lease by means of underground or surface mining methods;	<b>Different to Award</b>  While all employees voting on the Proposed Agreement are covered by the Mining Industry Award 2020 or the Black Coal Mining Industry Award 2020, the Proposed Agreement's scope is narrower than the Awards because the Proposed Agreement only applies to Employees of the Company employed in the classifications set out in Appendix 1 of the Proposed Agreement who undertake maintenance activities on a mining operation.



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(b) the processing of black coal at a coal handling or coal processing plant on or adjacent to a coal mining lease;</p> <p>(c) the transportation of black coal on a coal mining lease; and</p> <p>(d) other work on a coal mining lease directly connected with the extraction, mining and processing of black coal.</p> <p>4.3 The black coal mining industry does not include:</p> <p>(a) the mining of brown coal in conjunction with the operation of a power station;</p> <p>(b) the work of employees employed in head offices or corporate administration offices (but excluding work in town offices associated with the day-to-day operation of a local mine or mines) of employers engaged in the black coal mining industry;</p> <p>(c) the operation of a coal export terminal;</p> <p>(d) construction work on or adjacent to a coal mine site;</p> <p>(e) catering and other domestic services;</p> <p>(f) haulage of coal off a coal mining lease (unless such haulage is to a wash plant or char plant in the vicinity of the mine); or</p> <p>(g) the supply of shotfiring or other explosive services by an employer not otherwise engaged in the black coal mining industry.</p> <p>NOTE: The coverage clause is intended to reflect the status quo which existed under key pre-modern awards in relation to the kinds of employers and employees to whom those awards applied and the extent to which the awards applied to such employers and employees.</p> <p>An example of the types of issues and some of the case law to be considered when addressing coverage matters can be found in Australian Collieries Staff Association and Queensland Coal Owners Association – No. 20 of 1980, 22 February 1982 [Print CR2297] and in the Court decisions cited in this decision.</p> <p>4.4 This award covers employers which provide group training services for apprentices and/or trainees engaged in the black coal mining industry and/or parts of that industry and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. Clause 4.4 operates subject to the exclusions from coverage in this award.</p> <p>4.5 This award does not cover:</p> <p>(a) employees excluded from award coverage by the Act;</p> <p>(b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees; or</p> <p>(c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees.</p> <p>4.6 Subject to clauses 4.1 and 4.2, where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.</p>	

Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.	
3 RELATIONSHIP WITH OTHER INSTRUMENTS AND THE NATIONAL EMPLOYMENT STANDARDS	3.1 Subject to clauses 14, 16, 17 and 27, and of this Agreement, it does not incorporate the Company's policies or procedures (notwithstanding any references to any policies or procedures in this Agreement).		N/A	<b>Different to Award</b>  This is a machinery provision of the Proposed Agreement and confirms that where there is a reference to a policy or procedure in the Proposed Agreement, these policies or procedures are not incorporated into the Proposed Agreement and do not form part of the Proposed Agreement which the exception of the policies and procedures referred to in clauses 14, 16, 17 and 27 of the Proposed Agreement.
	3.2 While this Agreement operates in relation to an Employee, no other industrial instrument shall have effect in relation to the Employee.		N/A	<b>Different to Award</b>  This is a machinery provision of the Proposed Agreement and confirms that once the Proposed Agreement commences operation, no other industrial instrument, such as the Award, will apply to employees covered by the Proposed Agreement.
	3.3 The National Employment Standards (“NES”) 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.	A modern award or enterprise agreement must not exclude the National Employment Standards or any provision of the National Employment Standards.	<b>3. The National Employment Standards and this award</b>  3.1 The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award.  3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.  3.3 The employer must ensure that copies of this award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.	<b>Substantially the same as Award</b>  This is a machinery provision of the Proposed Agreement and confirms that the National Employment Standards (NES) apply to all employees as the minimum standard so that where there is an inconsistency between the NES and a clause of the Proposed Agreement: <ul style="list-style-type: none"><li>the NES will apply; and</li><li>the clause of the Proposed Agreement will not apply, except to the extent that the clause of the Proposed Agreement provides for a more beneficial outcome for employees than the NES.</li></ul> The effect of this clause is to recognise and reinforce that the safety net provisions of the NES operate as a minimum safety net. This means that if, at any time, a clause in the Proposed Agreement is inconsistent with the NES and the NES provides for a higher benefit, the Proposed Agreement term will not apply except to the extent that it is more beneficial for employees.
4 TERM OF THE AGREEMENT	4.1 This Agreement will commence operation seven days after the Agreement is approved by the Fair Work Commission ("FWC").  4.2 The term of the Agreement ends on the nominal expiry date of the Agreement which will be four years after the date on which the FWC approves the Agreement.  4.3 The Agreement will continue to operate past the term of the Agreement until terminated, or replaced by another agreement.		N/A	<b>Different to Award</b>  This is a machinery provision of the Proposed Agreement and confirms when the Proposed Agreement will commence operation, the term of the Proposed Agreement and what happens after the nominal term of the Proposed Agreement.
5 TYPE OF EMPLOYMENT	5.1 Employees may be engaged under this Agreement as Full Time Employees or Part Time Employees.		<b>8. Types of employment</b>  8.1 Employees under this award will be employed in one of the following	<b>Substantially the same as the Award</b>  The Award provides that staff (Schedule B)



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			categories: (a) full-time; (b) part-time; or (c) in the case of classifications in Schedule B—Staff Employees, casual.	employees may be engaged on a casual basis and sets out the employment conditions for this type of employment. However, the Award does not provide for Schedule A employees (such as those covered by the Award who will be subject to the Proposed Agreement) to be employed on a casual basis.
	<p>5.2 A Full Time Employee is an Employee who is employed to work ordinary hours of work as follows:</p> <p>(a) in the case of an Employee to whom the Black Coal Mining Industry Award 2020 would have applied but for the operation of this Agreement—an average of 35 ordinary hours per week, averaged over their roster cycle; or</p> <p>(b) in the case of any other Employee—an average of 38 ordinary hours per week, averaged over a six month period.</p>	<p><b>Section 62 - Maximum weekly hours of work</b></p> <p>(1) An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:</p> <p>(a) for a full - time employee--38 hours; or</p> <p>(b) for an employee who is not a full - time employee--the lesser of:</p> <p>(i) 38 hours; and</p> <p>(ii) the employee's ordinary hours of work in a week.</p> <p>Employee may refuse to work unreasonable additional hours</p> <p>(2) The employee may refuse to work additional hours (beyond those referred to in paragraph (1)(a) or (b)) if they are unreasonable.</p> <p>Determining whether additional hours are reasonable</p> <p>(3) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:</p> <p>(a) any risk to employee health and safety from working the additional hours;</p> <p>(b) the employee's personal circumstances, including family responsibilities;</p> <p>(c) the needs of the workplace or enterprise in which the employee is employed;</p> <p>(d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;</p> <p>(e) any notice given by the employer of any request or requirement to work the additional hours;</p> <p>(f) any notice given by the employee of his or her intention to refuse to work the additional hours;</p>	<p><b>9. Full-time employees</b></p> <p>A full-time employee is an employee whose average ordinary hours of work will be 35 hours per week.</p> <p><b>14. Ordinary hours of work</b></p> <p>An employee's ordinary hours of work are 35 hours per week, or an average of 35 hours per week over a roster cycle.</p> <p><b>15. Rostering arrangements</b></p> <p>15.1 Rostering of hours and length of shifts</p> <p>(a) The employer may determine the type of rosters to be worked.</p> <p>(b) The employer may determine the shift length to be worked where the ordinary hours of the shift do not exceed 10 hours.</p> <p>(c) A shift may be longer than 10 ordinary hours:</p> <p>(i) where the employer and the majority of affected employees agree; or</p> <p>(ii) in the case of a dispute, as resolved in accordance with clause 32—Dispute resolution.</p> <p>15.2 Shift starting and finishing times</p> <p>(a) The employer may determine the start and finish times of shifts up to 10 ordinary hours.</p> <p>(b) Shifts of longer than 10 ordinary hours will be worked between the starting and finishing times:</p> <p>(i) that are agreed between the employer and the majority of affected employees; or</p> <p>(ii) in the case of a dispute, that are resolved in accordance with clause 32—Dispute resolution.</p> <p>15.3 Number and spread of shifts</p> <p>The number and spread of ordinary shifts may be varied by the employer and, in the case of dispute, are resolved in accordance with the procedure in clause 32—Dispute resolution.</p> <p>15.4 Starting and finishing places</p> <p>(a) The starting and finishing place of a shift:</p> <p>(i) are to be agreed between the employer and the majority of affected employees; or</p> <p>(ii) in the absence of agreement, are resolved in accordance with the procedure in clause 32—Dispute resolution.</p> <p>(b) At underground mines, the designated starting and finishing place will be on the surface.</p> <p>15.5 Changes to rosters</p>	<p><b>Substantially the same as the Award</b></p> <p>The Proposed Agreement confirms that full-time employees who would be covered by the Black Coal Mining Industry Award 2020 but for the Proposed Agreement are employed to work an average of 35 ordinary hours, averaged over a roster cycle.</p> <p>Under the Award, full-time employees are employed to work 35 ordinary hours per week, or an average of 35 hours per week over a roster cycle.</p> <p><b>Consistent with NES</b></p> <p>The Proposed Agreement is consistent with the NES regarding hours of work because:</p> <ul style="list-style-type: none"><li>• The NES prescribes that the weekly hours of work for a full-time employee are 38 hours per week, subject to any reasonable additional hours. Under the Proposed Agreement, full-time employees who would ordinarily be covered by the Black Coal Mining Industry Award are engaged to work 35 ordinary hours per week which can be averaged over a roster cycle.</li><li>• The NES allows for averaging arrangements of ordinary hours in an enterprise agreement. The Proposed Agreement provides for averaging of hours.</li></ul>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>(g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;</p> <p>(h) the nature of the employee's role, and the employee's level of responsibility;</p> <p>(i) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;</p> <p>(j) any other relevant matter.</p> <p>Authorised leave or absence treated as hours worked</p> <p>(4) For the purposes of subsection (1), the hours an employee works in a week are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised:</p> <p>(a) by the employee's employer; or</p> <p>(b) by or under a term or condition of the employee's employment; or</p> <p>(c) by or under a law of the Commonwealth, a State or a Territory, or an instrument in force under such a law.</p> <p>Section 63 - Modern awards and enterprise agreements may provide for averaging of hours of work</p> <p>(1) A modern award or enterprise agreement may include terms providing for the averaging of hours of work over a specified period. The average weekly hours over the period must not exceed:</p> <p>(a) for a full - time employee--38 hours; or</p> <p>(b) for an employee who is not a full - time employee--the lesser of:</p> <p>(i) 38 hours; and</p> <p>(ii) the employee's ordinary hours of work in a week.</p> <p>(2) The terms of a modern award or enterprise agreement may provide for average weekly hours that exceed the hours referred to in paragraph (1)(a) or (b) if the excess hours are reasonable for the purposes of subsection 62(1).</p> <p>Note: Hours in excess of the hours referred to in paragraph (1)(a) or (b) that are worked in</p>	<p>The employer will not change an employee's place on a roster, except in accordance with Part 7—Workplace delegates, Consultation and Dispute Resolution and where:</p> <p>(a) the employer has given one week's notice of any change to the employee; or</p> <p>(b) where less than one week's notice is given, the employee is paid at overtime rates for all work from the time of change of shift until the one week's notice referred to in clause 15.5(a) would have expired.</p> <p>15.6 Rostered days off</p> <p>(a) Period of notice to be given</p> <p>Subject to clause 15.6, where an employee is entitled to a rostered day off (RDO) the employer must advise the employee of this:</p> <p>(i) at least 4 weeks before the day the employee is to take off; or</p> <p>(ii) within a lesser period agreed by the employer and the majority of employees in the mine or sections affected.</p> <p>(b) An employee required to work on an RDO</p> <p>An employer will only require an employee to work on an RDO after attempts by the employer to cover the casual vacancy by other means have failed.</p> <p>(c) Payment for working on an RDO</p> <p>An employee will be paid for working ordinary hours on an RDO at either:</p> <p>(i) ordinary rates for time worked during ordinary hours on an RDO, and</p> <ul style="list-style-type: none"><li>• the employee will then take a day off in lieu before the end of the employee's next roster cycle;</li><li>• this day in lieu will be selected by the employee provided that at least one week's notice is given to the employer; and</li><li>• the employee will be allowed this day off unless the operations of the mine will be affected by the absence,</li></ul> <p>or</p> <p>(ii) overtime rates for the time worked during ordinary hours on the RDO, without any day off in lieu.</p> <p>(d) An employee will be paid overtime rates for all time worked outside or in excess of the ordinary hours for that day or shift.</p> <p>(e) RDO moved to another day</p> <p>(i) An employer, with the agreement of the majority of employees affected, may move the RDO of these employees to another day in the case of:</p> <ul style="list-style-type: none"><li>• a breakdown of machinery;</li><li>• a failure or shortage of electric power;</li><li>• meeting the requirements of the mine; or</li><li>• an emergency situation.</li></ul> <p>(ii) In the case of another day being substituted for the RDO, the new day becomes the RDO and the original day becomes an ordinary working day.</p> <p>(iii) An individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.</p>	





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		a week in accordance with averaging terms in a modern award or enterprise agreement (whether the terms comply with subsection (1) or (2)) will be treated as additional hours for the purposes of section 62. The averaging terms will be relevant in determining whether the additional hours are reasonable (see paragraph 62(3)(i)).	(f) RDO falling on a recognised public holiday  An employee who is entitled to an RDO which falls on a public holiday is, at the discretion of the employer:  (i) to be paid at the employee's classification rate; or  (ii) to be credited with one day for each such public holiday (payable at ordinary rates).  (g) RDO not to fall on a recognised public holiday for an employee working Monday to Friday shifts of up to 8.5 ordinary hours  (i) Subject to clause 15.6(g)(ii), where an employee is working Monday to Friday shifts of up to 8.5 hours and the employee's roster does not include work on a public holiday, an RDO is not to be scheduled to fall on a public holiday.  (ii) Where a public holiday is prescribed after an employee who is covered by clause 15.6(g)(i) has been notified of an RDO, and that holiday falls on the employee's RDO, the employer must allow the employee to take the RDO on an alternative weekday.	
	<p>5.3 A Part Time Employee is an Employee who:</p> <p>(a) is employed to work less than the following number of ordinary hours per week:</p> <p>(i) in the case of an Employee to whom the Black Coal Mining Industry Award 2020 would have applied but for the operation of this Agreement—an average of 35 ordinary hours per week, averaged over their roster cycle; or</p> <p>(ii) in the case of any other Employee—an average of 38 ordinary hours per week, averaged over a six month period;</p> <p>(b) has reasonably predictable hours of work; and</p> <p>(c) receives, on a pro rata basis, equivalent pay and conditions to those of Full Time Employees who do the same kind of work as provided for in Appendix 1.</p> <p>5.4 Each Part Time Employee's rostered hours of work, including the days when they will work, location and their starting and finishing times will be as agreed in writing between the Company and the Part Time Employee from time to time.</p>	<p><b>Section 62 - Maximum weekly hours of work</b></p> <p>(1) An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:</p> <p>(a) for a full - time employee--38 hours; or</p> <p>(b) for an employee who is not a full - time employee--the lesser of:</p> <p>(i) 38 hours; and</p> <p>(ii) the employee's ordinary hours of work in a week.</p> <p>Employee may refuse to work unreasonable additional hours</p> <p>(2) The employee may refuse to work additional hours (beyond those referred to in paragraph (1)(a) or (b)) if they are unreasonable.</p> <p>Determining whether additional hours are reasonable</p> <p>(3) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:</p> <p>(a) any risk to employee health and safety from working the additional hours;</p> <p>(b) the employee's personal circumstances, including family responsibilities;</p> <p>(c) the needs of the workplace or enterprise in which the employee is employed;</p> <p>(d) whether the employee is entitled to</p>	<p><b>10. Part-time employees</b></p> <p>10.1 A part-time employee:</p> <p>(a) is engaged to work less than 35 hours per week;</p> <p>(b) has reasonably predictable hours of work; and</p> <p>(c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.</p> <p>10.2 At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.</p> <p>10.3 Any agreed variation to the regular pattern of work will be recorded in writing.</p> <p>10.4 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 21—Overtime.</p> <p>10.5 A part-time employee will be paid the minimum hourly rate prescribed for the classification, group or level on which the employee is engaged.</p> <p><b>14. Ordinary hours of work</b></p> <p>An employee's ordinary hours of work are 35 hours per week, or an average of 35 hours per week over a roster cycle.</p> <p><b>15. Rostering arrangements</b></p> <p>15.1 Rostering of hours and length of shifts</p> <p>(a) The employer may determine the type of rosters to be worked.</p> <p>(b) The employer may determine the shift length to be worked where the ordinary hours of the shift do not exceed 10 hours.</p> <p>(c) A shift may be longer than 10 ordinary hours:</p> <p>(i) where the employer and the majority of affected employees agree; or</p> <p>(ii) in the case of a dispute, as resolved in accordance with clause 32—Dispute resolution.</p>	<p><b>Substantially the same as the Award</b></p> <p>The Proposed Agreement confirms that part-time employees (who would be covered by the Black Coal Mining Industry Award 2020 but for the Proposed Agreement) are employed to work less than an average of 35 ordinary hours per week.</p> <p>Under the Award, part-time employees are employed to work less than 35 hours per week.</p> <p>Both the Award and the Proposed Agreement provide that Part Time Employees will receive, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.</p> <p>Under the Proposed Agreement this means that a Part Time Employee working a fraction of one of the full-time rosters in Appendix 1 (or a new roster calculated in accordance with clause 7.8) will be paid, at a minimum, for each hour of work at the Minimum Hourly Roster Rate for the roster.</p> <p>The Part Time Employee's Minimum Annual Salary will be the relevant Minimum Hourly Roster Rate multiplied by the Part Time Employee's total annual rostered hours. Those matters including the roster the employee is working on are to be agreed on an individual basis in accordance with clause 5.4.</p> <p><b>Consistent with NES</b></p> <p>The Proposed Agreement is consistent with the NES regarding hours of work because:</p> <ul style="list-style-type: none"><li>The NES prescribes that the weekly hours of work for a part-time employee are the lesser of 38 hours per week or the employee's ordinary hours of work, subject to any reasonable additional hours. Under the Proposed Agreement, part-time employees covered by the Black Coal Mining Industry Award are engaged to work less than an average of 35</li></ul>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;</p> <p>(e) any notice given by the employer of any request or requirement to work the additional hours;</p> <p>(f) any notice given by the employee of his or her intention to refuse to work the additional hours;</p> <p>(g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;</p> <p>(h) the nature of the employee's role, and the employee's level of responsibility;</p> <p>(i) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;</p> <p>(j) any other relevant matter.</p> <p>Authorised leave or absence treated as hours worked</p> <p>(4) For the purposes of subsection (1), the hours an employee works in a week are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised:</p> <p>(a) by the employee's employer; or</p> <p>(b) by or under a term or condition of the employee's employment; or</p> <p>(c) by or under a law of the Commonwealth, a State or a Territory, or an instrument in force under such a law.</p> <p>Section 63 - Modern awards and enterprise agreements may provide for averaging of hours of work</p> <p>(1) A modern award or enterprise agreement may include terms providing for the averaging of hours of work over a specified period. The average weekly hours over the period must not exceed:</p> <p>(a) for a full - time employee--38 hours; or</p> <p>(b) for an employee who is not a full - time employee--the lesser of:</p> <p>(i) 38 hours; and</p>	<p>15.2 Shift starting and finishing times</p> <p>(a) The employer may determine the start and finish times of shifts up to 10 ordinary hours.</p> <p>(b) Shifts of longer than 10 ordinary hours will be worked between the starting and finishing times:</p> <p>(i) that are agreed between the employer and the majority of affected employees; or</p> <p>(ii) in the case of a dispute, that are resolved in accordance with clause 32—Dispute resolution.</p> <p>15.3 Number and spread of shifts</p> <p>The number and spread of ordinary shifts may be varied by the employer and, in the case of dispute, are resolved in accordance with the procedure in clause 32—Dispute resolution.</p> <p>15.4 Starting and finishing places</p> <p>(a) The starting and finishing place of a shift:</p> <p>(i) are to be agreed between the employer and the majority of affected employees; or</p> <p>(ii) in the absence of agreement, are resolved in accordance with the procedure in clause 32—Dispute resolution.</p> <p>(b) At underground mines, the designated starting and finishing place will be on the surface.</p> <p>15.5 Changes to rosters</p> <p>The employer will not change an employee's place on a roster, except in accordance with Part 7—Workplace delegates, Consultation and Dispute Resolution and where:</p> <p>(a) the employer has given one week's notice of any change to the employee; or</p> <p>(b) where less than one week's notice is given, the employee is paid at overtime rates for all work from the time of change of shift until the one week's notice referred to in clause 15.5(a) would have expired.</p> <p>15.6 Rostered days off</p> <p>(a) Period of notice to be given</p> <p>Subject to clause 15.6, where an employee is entitled to a rostered day off (RDO) the employer must advise the employee of this:</p> <p>(i) at least 4 weeks before the day the employee is to take off; or</p> <p>(ii) within a lesser period agreed by the employer and the majority of employees in the mine or sections affected.</p> <p>(b) An employee required to work on an RDO</p> <p>An employer will only require an employee to work on an RDO after attempts by the employer to cover the casual vacancy by other means have failed.</p> <p>(c) Payment for working on an RDO</p> <p>An employee will be paid for working ordinary hours on an RDO at either:</p> <p>(i) ordinary rates for time worked during ordinary hours on an RDO, and</p> <p>• the employee will then take a day off in lieu before the end of the employee's</p>	<p>ordinary hours per week (plus reasonable additional hours in accordance with their roster).</p> <ul style="list-style-type: none"><li>• The NES allows for averaging arrangements of ordinary hours in an enterprise agreement. The Proposed Agreement provides for averaging of hours.</li></ul>

Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>(ii) the employee's ordinary hours of work in a week.</p> <p>(2) The terms of a modern award or enterprise agreement may provide for average weekly hours that exceed the hours referred to in paragraph (1)(a) or (b) if the excess hours are reasonable for the purposes of subsection 62(1).</p> <p>Note: Hours in excess of the hours referred to in paragraph (1)(a) or (b) that are worked in a week in accordance with averaging terms in a modern award or enterprise agreement (whether the terms comply with subsection (1) or (2)) will be treated as additional hours for the purposes of section 62. The averaging terms will be relevant in determining whether the additional hours are reasonable (see paragraph 62(3)(i)).</p>	<p>next roster cycle;</p> <ul style="list-style-type: none"><li>• this day in lieu will be selected by the employee provided that at least one week's notice is given to the employer; and</li><li>• the employee will be allowed this day off unless the operations of the mine will be affected by the absence,</li></ul> <p>or</p> <p>(ii) overtime rates for the time worked during ordinary hours on the RDO, without any day off in lieu.</p> <p>(d) An employee will be paid overtime rates for all time worked outside or in excess of the ordinary hours for that day or shift.</p> <p>(e) RDO moved to another day</p> <p>(i) An employer, with the agreement of the majority of employees affected, may move the RDO of these employees to another day in the case of:</p> <ul style="list-style-type: none"><li>• a breakdown of machinery;</li><li>• a failure or shortage of electric power;</li><li>• meeting the requirements of the mine; or</li><li>• an emergency situation.</li></ul> <p>(ii) In the case of another day being substituted for the RDO, the new day becomes the RDO and the original day becomes an ordinary working day.</p> <p>(iii) An individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.</p> <p>(f) RDO falling on a recognised public holiday</p> <p>An employee who is entitled to an RDO which falls on a public holiday is, at the discretion of the employer:</p> <p>(i) to be paid at the employee's classification rate; or</p> <p>(ii) to be credited with one day for each such public holiday (payable at ordinary rates).</p> <p>(g) RDO not to fall on a recognised public holiday for an employee working Monday to Friday shifts of up to 8.5 ordinary hours</p> <p>(i) Subject to clause 15.6(g)(ii), where an employee is working Monday to Friday shifts of up to 8.5 hours and the employee's roster does not include work on a public holiday, an RDO is not to be scheduled to fall on a public holiday.</p> <p>(ii) Where a public holiday is prescribed after an employee who is covered by clause 15.6(g)(i) has been notified of an RDO, and that holiday falls on the employee's RDO, the employer must allow the employee to take the RDO on an alternative weekday.</p>	
	5.5 All time worked in excess of an Employee's rostered hours will be un-rostered overtime and paid for at the rates prescribed in clause 7.11.		<p><b>21. Overtime</b></p> <p>21.1 In calculating overtime, except for clause 21.8, each day is to be treated separately.</p> <p>21.2 Payment for overtime</p> <p>(a) Subject to the exceptions in clause 21.2(b) and clause 21.3, all time worked in excess of or outside the ordinary hours of any shift on the following days will be paid for at the following rates:</p>	<p><b>Different to the Award</b></p> <p>The Proposed Agreement confirms that all time worked in excess of rostered hours will be un-rostered overtime and paid at the overtime rates in clause 7.11 of the Proposed Agreement. Overtime for rostered hours has been factored into the Minimum Annual Salaries in the Proposed Agreement.</p>





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term			Explanation of the Effect of Proposed Agreement Term																		
			<table><tr><td>For overtime worked on</td><td>Overtime rate % of minimum hourly rate</td><td></td></tr><tr><td>Monday to Friday – first 3 hours</td><td>150</td><td></td></tr><tr><td>Monday to Friday – after first 3 hours</td><td>200</td><td></td></tr><tr><td>Saturday – first 3 hours</td><td>150</td><td></td></tr><tr><td>Saturday – after first 3 hours</td><td>200</td><td></td></tr><tr><td>Sunday – all hours</td><td>200</td><td></td></tr></table>	For overtime worked on	Overtime rate % of minimum hourly rate		Monday to Friday – first 3 hours	150		Monday to Friday – after first 3 hours	200		Saturday – first 3 hours	150		Saturday – after first 3 hours	200		Sunday – all hours	200				
For overtime worked on	Overtime rate % of minimum hourly rate																							
Monday to Friday – first 3 hours	150																							
Monday to Friday – after first 3 hours	200																							
Saturday – first 3 hours	150																							
Saturday – after first 3 hours	200																							
Sunday – all hours	200																							
			<p>NOTE: Where clause 21.2(a) refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable.</p> <p>(b) Subject to clause 21.3, all time worked in excess of or outside the ordinary hours of any shift by employees:</p> <p>(i) who are 6 day roster employees or 7 day roster employees; or</p> <p>(ii) who are regular weekend workers, meaning employees:</p> <ul style="list-style-type: none"><li>• who work a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays; or</li><li>• who work a roster which requires ordinary shifts on Saturday and Sunday where the majority of the rostered hours on the Saturday or Sunday shifts fall between midnight Friday and midnight Sunday;</li></ul> <p>will be paid for at the rate of 200% of the minimum hourly rate, except on public holidays where the rate is 300% of the minimum hourly rate.</p> <p>(c) Subject to clause 21.3, a casual employee working a roster mentioned in clause 21.2(b) or relieving a permanent employee working a roster mentioned in clause 21.2(b) will be paid at the rate of 200% of the casual minimum hourly rate for all time worked in excess of, or outside, the ordinary hours of the shift they are working, except on public holidays where the rate is 300% of the casual minimum hourly rate.</p>																					



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>21.3 Six day and seven day roster employees</p> <p>(a) All time worked in excess of or outside ordinary hours of an afternoon shift or a rotating night shift by a 6 day roster employee or a 7 day roster employee will be paid at 215% of the minimum hourly rate.</p> <p>(b) All time worked in excess of or outside ordinary hours of a permanent night shift by a 6 day roster employee or a 7 day roster employee will be paid at 225% of the minimum hourly rate.</p> <p>NOTE: Where clause 21.3 refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable.</p> <p>21.4 Minimum payment for overtime on Saturday and Sunday</p> <p>An employee called on to work overtime on a Saturday or Sunday (that is not continuous with work started on the previous day) will be paid for at least 3 hours at the appropriate rate.</p> <p>21.5 Reasonable additional hours</p> <p>Subject to the NES, an employer may require an employee to work reasonable additional hours in addition to their rostered hours, in which case the employee will be paid the applicable overtime rates.</p> <p>21.6 Averaging overtime payments</p> <p>An employer and an employee employed in a classification in Schedule B—Staff Employees may agree to average overtime payments over a length of a defined period.</p> <p>21.7 Rest period after working overtime</p> <p>(a) Length of the rest period</p> <p>When overtime work is necessary it will be arranged where possible for employees to have at least 10 consecutive hours off duty between the work of successive days.</p> <p>(b) Where the employee does not get a 10 hour rest</p> <p>(i) The following conditions apply to an employee who works so much overtime that the employee has not had at least 10 consecutive hours off duty between the end of the employee's ordinary hours of work on one day and the start of the employee's ordinary hours of work on the next day:</p> <ul style="list-style-type: none"><li>• the employee will be released from duty after that overtime is finished until the employee has had 10 consecutive hours off duty, and</li><li>• there will be no loss of pay for ordinary hours of work time which occur during this absence.</li></ul> <p>(ii) The following conditions apply to an employee who, on the instructions of the employer, resumes or continues work without having had 10 consecutive hours off duty in accordance with clause 21.7(b)(i):</p> <ul style="list-style-type: none"><li>• the employee will be paid at 200% of the minimum hourly rate during ordinary hours and after that until the employee is released from duty;</li><li>• the employee will then be entitled to be absent for 10 consecutive hours; and</li><li>• there will be no loss of pay for ordinary hours of work time which occur during this absence.</li></ul> <p>21.8 Call-back</p>	



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(a) Where an employer requires an employee to return to work overtime after leaving the mine (regardless of whether or not the employee is notified before or after leaving):</p> <p>(i) the employee must be paid at the overtime rate for not less than 4 hours for each time the employee is recalled; and</p> <p>(ii) except where unforeseen circumstances arise, the employee will not be required to work the full 4 hours if the job to be performed is completed within a shorter period.</p> <p>(b) Clause 21.8(a) does not apply where:</p> <p>(i) it is customary for the employee to return to the mine to perform a specific job outside their ordinary working hours; or</p> <p>(ii) the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of the employee's ordinary working hours.</p> <p>21.9 Call-back less than four hours</p> <p>Overtime worked in the circumstances set out in clause 21.8 will not be regarded as overtime for the purposes of a rest period as set out in clause 21.7, where the actual time worked on a recall is less than 4 hours.</p> <p>21.10 Meal breaks during non-rostered overtime</p> <p>Meal breaks during non-rostered overtime will be taken in accordance with clause 16.2.</p> <p>21.11 Time off instead of payment for overtime</p> <p>(a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.</p> <p>(b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 21.11.</p> <p>(c) An agreement must state each of the following:</p> <p>(i) the number of overtime hours to which it applies and when those hours were worked;</p> <p>(ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;</p> <p>(iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;</p> <p>(iv) that any payment mentioned in clause 21.11(c)(iii) must be made in the next pay period following the request.</p> <p>NOTE: An example of the type of agreement required by clause 21.11 is set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 21.11 can also be made by an exchange of emails between the employee and employer, or by other electronic means.</p> <p>(d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.</p> <p>EXAMPLE: By making an agreement under clause 21.11 an employee who</p>	



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>worked 2 overtime hours is entitled to 2 hours' time off.</p> <p>(e) Time off must be taken:</p> <p>(i) within the period of 6 months after the overtime is worked; and</p> <p>(ii) at a time or times within that period of 6 months agreed by the employee and employer.</p> <p>(f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 21.11 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.</p> <p>(g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 21.11(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.</p> <p>(h) The employer must keep a copy of any agreement under clause 21.11 as an employee record.</p> <p>(i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.</p> <p>(j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 21.11 will apply, including the requirement for separate written agreements under clause 21.11(b) for overtime that has been worked.</p> <p>NOTE: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65A(3) of the Act).</p> <p>(k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 21.11 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.</p> <p>NOTE: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 21.11.</p>	
	5.6 Employees may be engaged for a fixed term or specified task. Such Employees are not entitled to notice of termination or redundancy pay on expiry of the fixed term or completion of the specified task, unless required by the FW Act.		N/A	<p><b>Different to Award</b></p> <p>The Proposed Agreement allows the Company to employ employees covered by the Proposed Agreement on fixed-term or specified task contracts.</p> <p>The Award does not include an equivalent provision.</p>
6 DUTIES	<p>6.1 Employees are required to undertake all duties as reasonably directed by the Company that are within their skill and competence and, where required by law, authorised, and in accordance with safe working practices.</p> <p>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.</p>		<p><b>12. Classifications</b></p> <p>12.1 The classifications in which employees may be employed are set out in the following schedules:</p> <p>(a) Schedule A—Production and Engineering Employees; and</p> <p>(b) Schedule B—Staff Employees.</p> <p>12.2 Employer and employee duties</p>	<p><b>Substantially the same as Award</b></p> <p>Both the Proposed Agreement and the Award require the employee to:</p> <ul style="list-style-type: none"><li>Perform duties as required by the Company that are within the employee's skill and competency; and</li><li>Undertake training as required by the Company.</li></ul>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			(a) An employee:  (i) must perform work as reasonably required by the employer; and  (ii) must undertake training that the employer reasonably requires (which may include training to maintain their classification or acquire new competencies).  (b) Where an employee does not perform work or undertake training in accordance with clause 12.2(a) the employee is not entitled to payment for that period.  © The employer may direct an employee to carry out duties that are within the limits of the employee's skills, competence and training consistent with the respective classification structures of this award provided that the duties:  (i) are not designed to promote deskilling; and  (ii) are within safe working practices and statutory requirements.	The Proposed Agreement additionally requires employees to teach work skills to others as required. There is no equivalent requirement in the Award.
	<p>6.3 Notwithstanding anything to the contrary in a contract of employment, all Employees covered by this Agreement are employed to work at deployments within a hub as directed by the Company from time to time. The relevant hubs are:</p> <p>(a) Queensland Hub which includes all mining operations in Queensland at which the Company provides services now or in the future;</p> <p>(b) Western Australia Hub which includes all mining operations in Western Australia at which the Company provides services now or in the future;</p> <p>(c) South Australia Hub which includes all mining operations in South Australia at which the Company provides services now or in the future; and</p> <p>(d) any other region the Company designates as a new hub in the future.</p> <p>6.4 At least 28 days' notice, unless otherwise agreed between the Company and the Employee concerned, will be provided where an Employee is required by the Company to change deployment within their hub.</p> <p>6.5 Transfer between hubs will be by agreement with the Employee.</p>		<p><b>34. Redundancy</b></p> <p>34.1 The redundancy arrangements in this award are an industry-specific redundancy scheme and, as such, Subdivision B of Division 11 of the NES does not apply.</p> <p>34.2 Definition of redundancy</p> <p>(a) An employee is made redundant where an employee's employment is terminated at the employer's initiative:</p> <p>(i) because the employer 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</p> <p>(ii) because of insolvency or bankruptcy of the employer.</p> <p>(b) Clause 34.2 does not apply to employees engaged for a fixed term or a specified task.</p> <p>34.3 Severance payment</p> <p>Except where clause 34.5 applies, when terminations occur due to redundancy the employees terminated are entitled to severance pay equal to one ordinary week's pay for each completed year of employment.</p> <p>34.4 Retrenchment payment</p> <p>(a) Except where clause 34.5 applies, where redundancies occur due to:</p> <p>(i) technological change;</p> <p>(ii) market forces; or</p> <p>(iii) diminution of reserves,</p> <p>the employees terminated are entitled to retrenchment pay equal to 2 ordinary weeks' pay for each completed year of employment up to a maximum of 30 weeks' pay. This payment is additional to the payment prescribed in clause 34.3.</p> <p>(b) Regardless of length of employment, the minimum payment due to employees under clause 34.4(a) is 2 ordinary weeks' pay.</p> <p>(c) Despite clause 34.4(a), an employee who as at 20 March 2017 (the operative date) had more than 15 completed years of employment and after the operative date is made redundant will be entitled to retrenchment pay equal to 2 ordinary weeks' pay for each completed year of employment as at the operative date. This payment is additional to the payment prescribed in clause 34.3.</p>	<p><b>Less beneficial than Award</b></p> <p><u>Working within hubs</u></p> <p>The Proposed Agreement confirms that employees are employed to work at deployments within a hub as directed by the Company from time-to-time and sets out the conditions on changing hubs.</p> <p>This means that employees can be moved to different workplaces within a hub (upon the provision of 28 days' notice) and if the need for work at one site in the hub decreases or comes to an end, and the Company can provide work at another site in the hub, the Company can move employees to where it has work in the hub.</p> <p>It is the Company's position that if a need for work at one mining operation in the hub is coming to an end, and the Company can provide work at another mining operation in the hub, the Company can move you to where it has work in the hub and if this occurs your employment is not terminated by the Company. In these circumstances it is the Company's position that no redundancy pay would be payable if you decide to end your employment rather than continue your employment with the Company in the other location.</p> <p>The Award also includes provisions for the payment of travel time and reimbursement of travel expenses in circumstances where an employee is required to temporarily work away from their ordinary location.</p> <p>The Proposed Agreement does not include a provision for the payment of travel time and reimbursement of travel expenses in circumstances where an employee is required to temporarily work away from their ordinary location. Accordingly, the Proposed Agreement is less beneficial than the Award.</p> <p><u>Transfer between hubs</u></p>





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term									
			<p>34.5 Exemption</p> <p>An employer is not liable for the payment in clauses 34.3 and 34.4 if the employer obtains, or causes to be made available for the employee, work:</p> <p>(a) that the employee is competent to perform;</p> <p>(b) in a position that carries the same or a higher classification rate of pay than the employee’s previous position;</p> <p>(c) that can reasonably be regarded as permanent; and</p> <p>(d) allows the employee to reside in the same general locality as the employee’s previous residence.</p> <p>34.6 Variation of retrenchment pay</p> <p>Despite anything in clause 34, an employer may make application to the Fair Work Commission to be granted relief from the obligation to make a payment pursuant to clause 34.4. A dispute over what is just and expedient may be resolved through the procedure at clause 32—Dispute resolution.</p> <p><b>A.8 Allowances</b></p> <p>A.8.1 Except where specifically indicated, the following allowances will apply to all employees covered by Schedule A —Production and Engineering Employees and are payable in addition to the employee’s classification rate, but are not taken into account in the calculation of any other penalty rate prescribed by the award, except where specifically indicated.</p> <p>(b) Wage related allowances and reimbursements – clothing and transport</p> <table><tr><th>Allowance</th><th>Application</th><th>Reimbursements</th></tr><tr><td>Transport</td><td>When an employee is required to work during annual leave shutdown and the normal means of transport is unavailable and provided the employee attends for work and performs such work as the employer reasonably requires</td><td>1. Reimbursement of any expense reasonably incurred in excess of expenses usually incurred travelling between home and normal place of work</td></tr><tr><td></td><td>When an employee is required to temporarily work away from their ordinary location</td><td>2. Payment at ordinary rates for all time reasonably spent outside ordinary hours of work travelling between home and the temporary location beyond</td></tr></table>	Allowance	Application	Reimbursements	Transport	When an employee is required to work during annual leave shutdown and the normal means of transport is unavailable and provided the employee attends for work and performs such work as the employer reasonably requires	1. Reimbursement of any expense reasonably incurred in excess of expenses usually incurred travelling between home and normal place of work		When an employee is required to temporarily work away from their ordinary location	2. Payment at ordinary rates for all time reasonably spent outside ordinary hours of work travelling between home and the temporary location beyond	<p>Transfers between hubs will be by agreement.</p> <p>There is no equivalent provision in the Award.</p>
Allowance	Application	Reimbursements											
Transport	When an employee is required to work during annual leave shutdown and the normal means of transport is unavailable and provided the employee attends for work and performs such work as the employer reasonably requires	1. Reimbursement of any expense reasonably incurred in excess of expenses usually incurred travelling between home and normal place of work											
	When an employee is required to temporarily work away from their ordinary location	2. Payment at ordinary rates for all time reasonably spent outside ordinary hours of work travelling between home and the temporary location beyond											



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term				Explanation of the Effect of Proposed Agreement Term
					the time usually spent in travelling between home and the ordinary location and/or reimbursement of any expense reasonably incurred in such travelling in excess of the expense usually incurred travelling between home and the employee's ordinary location		
				When an employee works shiftwork, overtime or pre-shift overtime and the employee's normal means of transport is unavailable	3. Payment for one hour at ordinary rates or the provision of transport at the employer's cost		
	<p><b>6.6 Classifications</b></p> <p>(a) Employees will be placed in one of the following classifications:</p> <p>(i) Apprentices: completing an apprenticeship in a trade qualification;</p> <p>(ii) Non-trade qualified roles being: roles that do not require a trade qualification, other than employees employed as a Service Person – Tyre Fitter including</p> <p>(A) Service Person Maintenance;</p> <p>(B) Maintenance Associate;</p> <p>(C) Service Support Technician; and</p> <p>(D) other non-trade qualified roles (Fixed Plant, Light Vehicles, Mobile &amp; Field Maintenance).</p> <p>(iii) Maintenance Technician 1 (trade qualified): and Service Person – Tyre Fitters:</p> <p>(A) Tradespersons employed to spend most of their time performing Light Vehicle Maintenance &amp; Repairs;</p> <p>(B) Tradespersons who have less than 2 years' experience in the trade qualification required for their role.</p> <p>(C) Non-trade qualified employees employed as Service Person - Tyre Fitter.</p>		<p><b>A.1 Preamble and principles</b></p> <p>A.1.1 The classification structure in this award determines the minimum weekly rates payable to employees whose employment is subject to this award.</p> <p>A.1.2 The structure is a single stream structure, which does not contain any demarcations relating to the performance of work. It allows for a list of minesite competencies to be developed. Each mine's indicative competencies will use as a guide the competency standards contained in the Coal Industry Training Package.</p> <p>A.1.3 The definitions for each of the classification levels are necessarily general and intended to cover the types of work actually performed under this award. To eliminate doubt, the work performed by the employee, the assessment of the employee against minesite standards and, in relevant cases, the appointment of an employee to a particular classification by the employer, are the only relevant matters that determine an employee's entitlement to wages pursuant to clause A.1.</p> <p>A.1.4 The employer will make available to employees at a minesite the following:</p> <p>(a) the classification that will be occupied by employees whose employment is subject to this award; and</p> <p>(b) the requirements each employee must meet to occupy those classifications.</p> <p>A.1.5 Whenever an employer alters the requirements that an employee must hold, to occupy a classification, the altered requirements will be published at the minesite.</p> <p>NOTE: A proposal to alter such requirements will typically be subject to the consultation obligations in clause 30—Consultation about major workplace change of this award.</p> <p><b>A.2 Definitions</b></p> <p><b>A.2.1 Mineworker – Induction Level I</b></p> <p>Mineworker – Induction Level 1 is the entry level for a non-trade person who is</p>				<p><b>Different to the Award</b></p> <p>The Proposed Agreement has a different classification structure to the Award. It provides for employees to be classified as apprentices, non-trade qualified roles, maintenance technician 1 and maintenance technician 2.</p> <p>More information comparing the pay rates under the Proposed Agreement to pay rates under the Award is provided in the separate pay comparison tables made available to you.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term								
	<p>(iv) Maintenance Technician 2 (trade qualified):</p> <p>(A) Tradespersons (other than those performing predominately Light Vehicle Maintenance &amp; Repairs) who have 2 or more years' experience in the trade qualification required for their role.</p> <p>(b) Trade qualified experience includes experience in the trade qualification required for their role, gained prior to employment with the Company.</p> <p>6.7 An Employee's classification does not limit the duties that an Employee may be required to perform in accordance with clause 6.1.</p>		<p>undertaking the statutory/generic and/or minesite induction and who remains at this level until assessed by the employer to have successfully completed the induction requirements when they then advance to a Mineworker – Training.</p> <p><b>A.2.2 Mineworker – Induction Level 2 / Mineworker – Training</b></p> <p>Mineworker – Induction Level 2 is the entry level for a certificated tradesperson who is undertaking the statutory/generic and/or minesite induction. The tradesperson after successful completion of the induction phase then becomes a Mineworker – Training at this level.</p> <p>A Mineworker – Training is an employee who trains in and performs the required tasks under direct supervision. This classification applies to employees until assessed by the employer as meeting the requirements to be classified as a mineworker.</p> <p><b>A.2.3 Mineworker</b></p> <p>A Mineworker is an employee who is assessed by the employer as competent to perform the required tasks in a variety of operating circumstances and under limited supervision. An employee continues in this classification until assessed for advancement to Mineworker – Advanced.</p> <p><b>A.2.4 Mineworker – Advanced</b></p> <p>A Mineworker – Advanced is an employee who is assessed by the employer against the employer's available criteria as competent to perform the required tasks in all relevant operating circumstances at a level above that of a Mineworker.</p> <p>A Mineworker – Advanced may be required to supervise the work of other employees.</p> <p><b>A.2.5 Mineworker – Specialised</b></p> <p>A Mineworker – Specialised is an employee assessed by the employer as competent to perform specialised functions beyond the level of a Mineworker – Advanced. An employee appointed to this classification will undertake a specialised role, which requires them to exercise independent discretion in undertaking functions within the bounds set by the employer.</p> <p>The performance of this role may require the employee to supervise the work of other employees.</p> <p><b>A.3 Advancement</b></p> <p>A.3.1 An employee's advancement through the classification structure will be determined in accordance with the definitions above and as outlined in the following table:</p> <table><tr><td>Mineworker – Induction Level 1</td><td>Non-trades undertaking generic/minesite induction</td></tr><tr><td>Mineworker – Induction Level 2</td><td>Trades Certificate and undertaking generic/minesite induction</td></tr><tr><td>Mineworker – Training</td><td>Non-trade – Training in 4 Advancement Competencies; Trade – Training in 2 Advancement Competencies</td></tr><tr><td>Mineworker</td><td>Non-trade – Competent in 4 Advancement Competencies; Trade – Certificate plus 2 Advancement Competencies</td></tr></table> <p>A.3.2 Progression to the classification of Mineworker – Advanced may occur where an employee is assessed as competent against the available criteria or is appointed to a statutory position. Although advancement to this classification is not</p>	Mineworker – Induction Level 1	Non-trades undertaking generic/minesite induction	Mineworker – Induction Level 2	Trades Certificate and undertaking generic/minesite induction	Mineworker – Training	Non-trade – Training in 4 Advancement Competencies; Trade – Training in 2 Advancement Competencies	Mineworker	Non-trade – Competent in 4 Advancement Competencies; Trade – Certificate plus 2 Advancement Competencies	
Mineworker – Induction Level 1	Non-trades undertaking generic/minesite induction											
Mineworker – Induction Level 2	Trades Certificate and undertaking generic/minesite induction											
Mineworker – Training	Non-trade – Training in 4 Advancement Competencies; Trade – Training in 2 Advancement Competencies											
Mineworker	Non-trade – Competent in 4 Advancement Competencies; Trade – Certificate plus 2 Advancement Competencies											



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>governed by the acquisition of skills alone, for a trade certificated employee this may be achieved by exercising skills which require 6 post-trade modules of training or an equivalent level of skills in non-trade or cross-trade work.</p> <p>A.3.3 Progression to the classification of Mineworker – Specialised is by appointment of the employer where an employee is assessed as a specialist against the available criteria or is appointed to a statutory position. Although advancement to this classification is not governed by the acquisition of skills alone, for a trade certificated employee this may be achieved by exercising skills which require 12 post-trade modules of training or an equivalent level of skills in non-trade or cross-trade work.</p> <p>A.3.4 Non-trade work referred to in clauses A.3.2 and A.3.3 above, is work by certificated tradespersons, which is not part of their trade and is of a production or operations nature.</p> <p>A.3.5 Cross-trade work referred to in clauses A.3.2 and A.3.3 above, is work by certificated tradespersons, which is not part of their trade but is part of another certified trade in which they are competent.</p> <p><b>A.4 Minimum Rates</b></p> <p><i>[Not extracted in this table]</i></p> <p><b>A.5 Indicative Competencies</b></p> <p><b>A.5.1 Open cut mines</b></p> <p>The following lists are not exhaustive, but rather are indicative of the types of competencies utilised in open cut mines.</p> <p>INDUCTION</p> <p>Induction (Generic, Minesite); Interpersonal; First Aid; Fire Fighting; Work Health and Safety.</p> <p>ADVANCEMENT COMPETENCIES</p> <p>Dragline operation; Auger operation; Truck operation; Shovel operation; Cable handling; Drilling; Blasting; Shotfiring; Scraper operation; Excavator operation; Loader operation; Grader operation; Dozer operation; Pit Dewatering; Equipment servicing and maintenance; Washplant operation; Coal handling; Reclaim operation; Loader operation; Grader operation; Load out operation; Crusher/conveyor operation; Washplant servicing and maintenance; Tyre fitting; Crane operation; Rigging and dogging; Cross-trade skilling.</p> <p>While an employer may require an employee to become competent in one or more of the following, these competencies will not be required for advancement through the classification structure:</p> <p>Equipment servicing; Medium vehicles operation; Low loaders operation; Scaffolding; Minor maintenance; Conveyors; Bobcat; etc.</p> <p><b>A.5.2 Underground mines</b></p> <p>The following lists are not exhaustive, but rather are indicative of the types of competencies utilised in underground mines.</p> <p>INDUCTION</p> <p>Induction (Generic, Minesite); Interpersonal; First Aid; Fire Fighting; Work Health and Safety.</p> <p>ADVANCEMENT COMPETENCIES</p> <p>Face operations, Continuous Miner; Shuttle car operation; FCT operation; Strata control; Bord and pillar mining; Face operations, Longwall; Supports installation; Shearer operation; AFC operation; Stage loader operation; Ancillary equipment; Face operations, Shortwall; Recovery and installation of major equipment; Drift and shaft operations; Environmental monitoring; Ventilation control; Fire control and emergency procedures; Geomechanics; Exploration techniques; Training/Safety co-ordination; Systematic Safety Assessment technique; Reviewing complex tasks and</p>	



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term															
			<p>resources; Environmental management; Undermanager functions; Deputy functions; Shotfirer; Process Monitoring Control; Washery operations; Train loading operations; Railway maintenance; Haulage winder operation; Cross-trade skilling.</p> <p>OTHER COMPETENCIES</p> <p>While an employer may require an employee to become competent in one or more of the following, these competencies will not be required for advancement through the classification structure:</p> <p>Coal haulage; Mine services; TQC principles; Roadways; Roof and rib support; Gas drainage; Riggers certificate; Surface operations; Coal stockpile and reclaim; Washery services.</p> <p>NOTE: The Mineworker – Induction Level 2/Mineworker – Training classification includes the classifications formerly listed in Group B in the Coal Mining Industry (Production and Engineering) Interim Consent Award, September 1990, including the classification of coalcutting machineman. This note is inserted in light of the decision of a Full Bench of the Australian Industrial Relations Commission dated 5 December 2002 [PR925329].</p> <p><b>A.6 Apprentices</b></p> <p>A.6.1 The terms of this award apply to the employment of apprentices.</p> <p>A.6.2 The off-the-job training of an apprentice may be undertaken on day release or block release basis.</p> <p>A.6.3 In order to ensure sufficient training, an apprentice may be engaged by more than one employer in the coal mining industry. Where this occurs, an agreement must be reached between the employers involved on their responsibilities arising under the apprenticeship. A copy of the agreement must be given to the apprentice.</p> <p>A.6.4 An adult apprentice is a person who is 21 years of age or over when they commence a 3 year apprenticeship.</p> <p>A.6.5 An employer may provide an apprentice with a tool kit if they agree on the terms for the payment of the cost of the tool kit.</p> <p>A.6.6 Except where inconsistent with this award, the State legislation regulating apprenticeships applies.</p> <p>[...]</p> <p><b>A.6.8 Apprentice minimum wage arrangements for apprentices that commenced on or after 1 January 2014</b></p> <p>(a) Minimum wage rates for apprentices and adult apprentices commencing a training contract on or after 1 January 2014 are set out below as a percentage of the wage prescribed for Mineworker – Induction Level 2 of this award.</p> <p>(b) For first year apprentices (other than adult apprentices), who commenced on or after 1 January 2014, the increased rate will be phased in. From 1 January 2014 it will be 50% of the Mineworker – Induction Level 2 rate, from the first pay period on or after 1 January 2015 this will increase to 55% of the Mineworker – Induction Level 2 rate.</p> <p><b>(i) Apprentices other than adult apprentices</b></p> <table><tr><th>Stage</th><th colspan="2">Has not completed year 12</th><th colspan="2">Has completed year 12</th></tr><tr><th></th><th>% of Mineworker – Induction Level 2</th><th>\$ per week</th><th>% of Mineworker – Induction Level 2</th><th>\$ per week</th></tr><tr><td>1</td><td>50%</td><td>512.40</td><td>From 1 January</td><td>512.40</td></tr></table>	Stage	Has not completed year 12		Has completed year 12			% of Mineworker – Induction Level 2	\$ per week	% of Mineworker – Induction Level 2	\$ per week	1	50%	512.40	From 1 January	512.40	
Stage	Has not completed year 12		Has completed year 12																
	% of Mineworker – Induction Level 2	\$ per week	% of Mineworker – Induction Level 2	\$ per week															
1	50%	512.40	From 1 January	512.40															

Formatted Table





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term					Explanation of the Effect of Proposed Agreement Term
						2014: 50%		
						From first pay period commencing on or after 1 January 2015: 55%	563.64	
			2	60%	614.88	65%	666.12	
			3	75%	768.60	75%	768.60	
			4	90%	922.32	90%	922.32	
			(ii) Adult apprentices					
			Stage		Rate of pay		\$ per week	
			1		80% of Mineworker - Induction Level 2		819.84	
			2		Mineworker – Induction Level 1		1005.50	
			3		Mineworker – Induction Level 1		1005.50	
			<p>(c) A person employed by an employer under this award immediately prior to entering into a training contract as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training contract. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification in which the adult apprentice was engaged immediately prior to entering into the training contract.</p> <p>(d) Clause A.6.8(c) only applies where the employee, immediately prior to entering into a training contract as an adult apprentice has been an employee in the enterprise for a minimum of 6 months as a full-time employee or twelve months as a part-time or regular casual employee.</p> <p>A.6.9 Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training. Provided that clause A.6.9 will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.</p> <p>A.6.10 For the purposes of clause A.6.9, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of clause A.6.9, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.</p> <p>A.6.11 The amount payable by an employer under clause A.6.9 may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.</p> <p>A.6.12 All training fees charged by an RTO for prescribed courses and the cost of all</p>					



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within 6 months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within 3 months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.</p> <p>A.6.13 An employer may meet its obligations under clause A.6.12 by paying any fees and/or cost of textbooks directly to the RTO.</p> <p>A.6.14 An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.</p> <p>A.6.15 Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. Clause A.6.15 operates subject to the provisions of Schedule E—School-based Apprentices.</p> <p>A.6.16 No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.</p>	
7 REMUNERATION	<p>7.1 Employees will be paid a minimum annual salary for their roster, hub and classification (“<b>Minimum Annual Salary</b>”) in accordance with Appendix 1.</p> <p>7.2 The Minimum Annual Salary includes compensation for:</p> <p>(a) all allowances unless otherwise prescribed by this Agreement, disabilities and skills; and</p> <p>(b) any other loadings, penalties, overtime or other payments that would have been applicable to rostered hours in the applicable roster under the relevant modern award (being the modern award that would have applied to that Employee if this Agreement did not apply). This includes compensation for working on rosters which cover weekends, public holidays, and day/afternoon/night shifts except where expressly provided for in this Agreement.</p>		N/A	<p><b>Different to the Award</b></p> <p>The Proposed Agreement confirms that remuneration of employees covered by the Proposed Agreement will be by way of a fixed annual salary which includes compensation for allowances, disabilities and skills and all other loadings, penalties, overtime and other payments that would have been applicable to rostered hours under the Award.</p> <p>The Award does not have an equivalent provision dealing with annualised salaries.</p>
	<p>7.3 The Minimum Annual Salary rates specified in this Agreement are minimum rates. Nothing in this Agreement prevents an Employee being paid more than the relevant Minimum Annual Salary under a contract of employment or at the Company's discretion.</p> <p>7.4 While an Employee has a contractual annual salary under a contract of employment or at the Company's discretion that is higher than the Minimum Annual Salary at the relevant time for the Employee, the higher contractual annual salary will be applied for the purposes of calculating payments due under this Agreement where expressly stated in this Agreement.</p>			<p><b>Substantially the same as Award</b></p> <p>The Proposed Agreement confirms that the Minimum Annual Salaries are minimum rates and nothing prevents the Company from providing employees with an annual salary which is more than the specified minimum in the Proposed Agreement.</p> <p>The Proposed Agreement confirms that while an employee receives a contractual annual salary which is higher than the Minimum Annual Salary at the relevant time, the higher contractual annual salary will be applied for the purposes of calculating payments due under the Agreement where expressly stated in the Agreement.</p>
	<p>7.5 The commencement of this Agreement does not have the effect of reducing the contractual annual salary payable to any Employee under their contract of employment for their roster and in operation immediately prior to commencement of this</p>			<p>Since employers can provide salaries which are in excess of the Award, the provisions of the Proposed Agreement are substantially the same as the Award.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term				
	Agreement.							
	<p>7.6 During the life of this Agreement:</p> <p>(a) the Minimum Annual Salaries in Appendix 1 will increase by 4% on 1 September of the following years (payable from the first pay period on or after 1 September) and in line with the Company's annual reward review;</p> <p>(i) 1 September 2025;</p> <p>(ii) 1 September 2026;</p> <p>(iii) 1 September 2027; and</p> <p>(iv) 1 September 2028.</p> <p>(b) if an Employee under their contract of employment is entitled to a contractual annual salary that is greater than the relevant Minimum Annual Salary for the Employee in Appendix 1, the Employee will still receive a 4% minimum increase on their contractual annual salary as at 1 September of the years in clause 7.6(a) (payable from the first pay period after 1 September).</p> <p>(c) an Employee's contractual annual salary will be at least equivalent to the Minimum Annual Salary rates set out in this Agreement;</p> <p>(d) an Employee's Minimum Annual Salary as set out in this Agreement will not be reduced, unless the Employee changes to a classification, roster or hub with a different lower Minimum Annual Salary rate under this Agreement.</p> <p>7.7 Employees may be provided with greater percentage increases at the Company's discretion.</p>			<p><b>Potentially more beneficial than Award</b></p> <p>The Proposed Agreement confirms a 4% wage increase each year for the nominal term of the Proposed Agreement which will be applied to the minimum annual salaries and the salaries provided to employees under contracts of employment, where that salary is in excess of the minimum salary under the Proposed Agreement.</p> <p>There are no guaranteed wage increases under the Award, although the Fair Work Commission's practice is to increase these by an identified percentage each year following the annual wage review. For example, the Fair Work Commission increased the Award rates by 3.75% in July 2024 and 5.75% in July 2023.</p>				
	<p><b>7.8 Remuneration for rosters introduced during the term of the Agreement</b></p> <p>(a) If the Company introduces a full-time roster not included in Appendix 1, the full-time Minimum Annual Salary for each affected classification will be:</p> <p>(i) not less than the Minimum Hourly Roster Rate for the following roster patterns multiplied by the total rostered annual hours of the new roster:</p> <table><tr><td>Employee type</td><td>Minimum Hourly Roster Rate for calculation of Minimum Annual Salary for new rosters</td></tr><tr><td>An Employee to whom the BCMI Award</td><td>The Minimum Hourly Roster Rate in Appendix 1</td></tr></table>	Employee type	Minimum Hourly Roster Rate for calculation of Minimum Annual Salary for new rosters	An Employee to whom the BCMI Award	The Minimum Hourly Roster Rate in Appendix 1		No comparable provision, but the Award provisions would apply when calculating payments for work on new rosters.	<p>Clause 7.8 of the Proposed Agreement allows the company to introduce new rosters not included in Appendix 1 and explains how the Minimum Annual Salary for those new rosters will be calculated. The Proposed Agreement explains that those new salaries will not be less than:</p> <ul style="list-style-type: none"><li>the 7/7 12.5 hr shift Day only rate in Appendix 1 of the Proposed Agreement for the relevant Hub; or</li><li>at least 5% higher than the amount an employee would be entitled to receive for working on the new roster if the relevant modern award applied as at the date the new roster is announced to employees,</li></ul> <p>(whichever is the greater).</p> <p>When calculating the amount that is 5% higher than the amount an employee would be entitled to receive</p>
Employee type	Minimum Hourly Roster Rate for calculation of Minimum Annual Salary for new rosters							
An Employee to whom the BCMI Award	The Minimum Hourly Roster Rate in Appendix 1							

Agreement clause	Proposed Agreement Term			Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	would have applied but for the operation of this Agreement	for the Queensland Hub roster – 7 Days on, 7 Days off (12.5-hour shifts) by relevant classification and year				for working on the new roster if the relevant modern award applied, the Company will factor in all entitlements an employee in the relevant hub and classification would be entitled to receive under the relevant modern award for working on the roster for a period of 1 year (including but not limited ordinary rates, loadings, penalties, overtime and allowances).
	Any Employee to whom the Mining Industry Award would have applied but for the operation of this Agreement, except those in the South Australia Hub	The Minimum Hourly Roster Rate in Appendix 1 for the Western Australia Hub roster -7 Days on, 7 Days off(12.5-hour shifts) – by relevant classification and year				Once the Minimum Annual Salary for the new roster has been calculated, the Minimum Hourly Roster rate for the new roster will also be used for Part Time Employees working on the new roster (where this is agreed with the individual employee in accordance with clause 5.4).
	Any Employee to whom the Mining Industry Award would have applied but for the operation of this Agreement and who is employed in the SA Hub	The Minimum Hourly Roster Rate in Appendix 1 for the South Australia hub – 7 Days on(12.5-hour shifts) – by relevant classification and year				
	and					
	(ii)at least 5% higher than the amount an employee would be entitled to receive for working on the new roster if the relevant modern award applied to that employee, being					
	(A) in the case of an Employee to whom the BCMI Award would have applied but for the operation of this Agreement, the BCMI Award as at the date the definite decision to introduce the new roster is announced to Employees; and					
	(B) in the case of an Employee to whom the Mining Industry Award would have applied but for the operation of this Agreement, the Mining Industry Award as at the date the definite decision to introduce the new roster is announced to Employees.					
	(iii) Once commenced, be subject to any applicable minimum salary increases set out in clause 7.6 of this Agreement.					
	(b) The Minimum Hourly Roster Rate for any Minimum Annual Salary introduced in accordance with this clause will be calculated by dividing the Minimum Annual Salary by the total rostered hours for the relevant roster pattern.					
	(c) A part-time employee will be paid on a pro rata basis in accordance with the clause 5.3(c).					
	(d) This subclause 7.8 does not apply to individual flexibility arrangements entered into under clause 23 of this Agreement.					
	7.9 Allowances				A separate comparison of Award and Agreement allowances has been made available for you. Award night shift rates are discussed below.	An additional comparison of Award and Agreement allowances has been made available for you, and you should refer to that document for information about



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term																												
	<p>(a) Allowances are provided for in the following sections of this Agreement:</p> <p>(i) clause 7.10 (Night Shift Allowance)</p> <p>(ii) clause 20 (Accommodation and Travel); and</p> <p>(iii) Appendix 2 of this Agreement.</p> <p>(b) Separately payable allowances in Appendix 2 will increase in line with the salary increases set out in clause 7.6</p>			<p>allowances.</p> <p>While the Proposed Agreement does include some separately payable allowances for employees working in the Queensland hub, there are no separately payable allowances for employees in the WA and SA hubs.</p>																												
	<p>7.10 Night Shift Allowance</p> <p>(a) Night Shift Allowance is payable to an Employee while the Employee is working a roster that includes night shifts. A night shift is any shift that finishes after midnight and at or before 8 am.</p> <p>(b) Night Shift Allowance is calculated as 3% of Minimum Annual Salary and is paid in consideration of the demands of working night shift. Where an Employee is eligible, Night Shift Allowance is payable fortnightly. in equal instalments. Night Shift Allowance will be included in payments for the following entitlements under this Agreement</p> <p>(i) accident pay (clause 7.19);</p> <p>(ii) annual leave (including cashed out annual leave) (clause 11);</p> <p>(iii) paid personal/carer's leave (clause 12);</p> <p>(iv) paid compassionate leave (clause 13);</p> <p>(v) paid parental leave, if an employee was entitled to night shift allowance immediately prior to commencing parental leave, including where an employee was entitled to night shift allowance immediately before being transferred to a 'safe job' or commencing 'no safe job leave' prior to commencing parental leave (clause 14);</p> <p>(vi) long service leave (clause 15);</p> <p>(vii) paid leave to deal with family and domestic violence (clause 15);</p> <p>(viii) paid community service leave (clause 16);</p> <p>(ix) stand aside with pay (clause 21);</p> <p>(x) leave to attend workplace delegate training (clause 24.8);</p> <p>(xi) redundancy (clause 27);</p> <p>(xii) payment in lieu of notice of termination of employment (clause 28).</p> <p>(c) If an Employee stops working night shift, the Night Shift Allowance will cease to be paid.</p> <p>(d) Night Shift Allowance is calculated on a pro rata basis for Part Time Employees in accordance with clause 5.3(c).</p>		<p>22. Shiftwork</p> <p>22.1 Definitions</p> <p>(a) Afternoon shift means any shift, the ordinary hours of which finish after 6.00 pm and at or before midnight.</p> <p>(b) Night shift means any shift, the ordinary hours of which finish after midnight and at or before 8.00 am.</p> <p>(c) Permanent night shift employee is an employee who:</p> <p>(i) works night shift only; or</p> <p>(ii) stays on night shift for a longer period than 4 consecutive weeks; or</p> <p>(iii) works on a roster that does not give at least one-third of the employee's working time off night shift in each roster cycle.</p> <p>(d) Rotating night shift employee is an employee other than a permanent night shift employee who works night shift.</p> <p>23. Penalty rates and weekend work</p> <p>23.1 An employee will be paid the following additional penalties for all ordinary hours worked during the following periods:</p> <table><tr><th></th><th>Additional penalty (% of minimum hourly rate)</th></tr><tr><td>Monday to Friday</td><td></td></tr><tr><td>Day work / day shift</td><td>0</td></tr><tr><td>Afternoon shift or rotating night shift</td><td>15</td></tr><tr><td>Permanent night shift</td><td>25</td></tr><tr><td>Saturday</td><td></td></tr><tr><td>Day work / day shift—first 4 hours</td><td>50</td></tr><tr><td>Day work / day shift—after 4 hours</td><td>100</td></tr><tr><td>Afternoon shift or rotating night shift—first 4 hours</td><td>72.5</td></tr><tr><td>Afternoon shift or rotating night shift—after 4 hours</td><td>130</td></tr><tr><td>Permanent night shift—first 4 hours</td><td>87.5</td></tr><tr><td>Permanent night shift—after 4 hours</td><td>150</td></tr><tr><td>Sunday</td><td></td></tr><tr><td>Day work / day shift</td><td>100</td></tr></table>		Additional penalty (% of minimum hourly rate)	Monday to Friday		Day work / day shift	0	Afternoon shift or rotating night shift	15	Permanent night shift	25	Saturday		Day work / day shift—first 4 hours	50	Day work / day shift—after 4 hours	100	Afternoon shift or rotating night shift—first 4 hours	72.5	Afternoon shift or rotating night shift—after 4 hours	130	Permanent night shift—first 4 hours	87.5	Permanent night shift—after 4 hours	150	Sunday		Day work / day shift	100	<p><b>More beneficial than the Award</b></p> <p>Under the Proposed Agreement, employees are entitled to a Minimum Annual Salary and if required to work night shift, employees receive an additional 3% night shift allowance.</p> <p>For full time night shift rosters (which do not include any continuous night shift rosters), the Minimum Annual Salary in the Proposed Agreement has been calculated to include the night shift rates applicable under the Award. The 3% night shift allowance is then paid in addition to this under the Proposed Agreement.</p> <p>For Part Time Employees, under the Proposed Agreement the 3% night shift allowance will be calculated on the basis of their pro rated Minimum Annual Salary as explained in relation to clause 5.3 and 5.4 above.</p> <p>Please see the separate comparison of the Award and Agreement rates which has been made available for you for more information.</p>
	Additional penalty (% of minimum hourly rate)																															
Monday to Friday																																
Day work / day shift	0																															
Afternoon shift or rotating night shift	15																															
Permanent night shift	25																															
Saturday																																
Day work / day shift—first 4 hours	50																															
Day work / day shift—after 4 hours	100																															
Afternoon shift or rotating night shift—first 4 hours	72.5																															
Afternoon shift or rotating night shift—after 4 hours	130																															
Permanent night shift—first 4 hours	87.5																															
Permanent night shift—after 4 hours	150																															
Sunday																																
Day work / day shift	100																															





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term		Explanation of the Effect of Proposed Agreement Term												
			Afternoon shift or rotating night shift	130													
			Permanent night shift	150													
	<p>7.11 Un-rostered overtime</p> <p>(a) Any un-rostered overtime worked by Employees will be paid at:</p> <p>(i) other than on public holidays, at double the Minimum Hourly Roster Rate for each hour of un-rostered overtime; and</p> <p>(ii) on public holidays, at triple the Minimum Hourly Roster Rate for each hour of un-rostered overtime.</p> <p>(b) Alternatively, an 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.</p>		<p><b>21. Overtime</b></p> <p>21.1 In calculating overtime, except for clause 21.8, each day is to be treated separately.</p> <p>21.2 Payment for overtime</p> <p>(a) Subject to the exceptions in clause 21.2(b) and clause 21.3, all time worked in excess of or outside the ordinary hours of any shift on the following days will be paid for at the following rates:</p> <table><tr><th>For overtime worked on</th><th>Overtime rate % of minimum hourly rate</th></tr><tr><td>Monday to Friday – first 3 hours</td><td>150</td></tr><tr><td>Monday to Friday – after first 3 hours</td><td>200</td></tr><tr><td>Saturday – first 3 hours</td><td>150</td></tr><tr><td>Saturday – after first 3 hours</td><td>200</td></tr><tr><td>Sunday – all hours</td><td>200</td></tr></table> <p>NOTE: Where clause 21.2(a) refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable.</p> <p>(b) Subject to clause 21.3, all time worked in excess of or outside the ordinary hours of any shift by employees:</p> <p>(i) who are 6 day roster employees or 7 day roster employees; or</p> <p>(ii) who are regular weekend workers, meaning employees:</p> <ul style="list-style-type: none"><li>• who work a roster which requires ordinary shifts on public holidays and not less</li></ul>		For overtime worked on	Overtime rate % of minimum hourly rate	Monday to Friday – first 3 hours	150	Monday to Friday – after first 3 hours	200	Saturday – first 3 hours	150	Saturday – after first 3 hours	200	Sunday – all hours	200	<p><b>Overall more beneficial than Award</b></p> <p>The Proposed Agreement confirms that un-rostered overtime will be paid at 200% of the minimum hourly roster rate for each hour for all days other than public holidays and at 300% of the minimum hourly roster rate for each hour for public holidays. This is generally more beneficial than the Award because the Proposed Agreement minimum hourly rate is above the Award minimum hourly rate and is intended to compensate for any Award shift loadings for work on the roster.</p>
For overtime worked on	Overtime rate % of minimum hourly rate																
Monday to Friday – first 3 hours	150																
Monday to Friday – after first 3 hours	200																
Saturday – first 3 hours	150																
Saturday – after first 3 hours	200																
Sunday – all hours	200																



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>than 272 ordinary hours per year on Sundays; or</p> <ul style="list-style-type: none"><li>• who work a roster which requires ordinary shifts on Saturday and Sunday where the majority of the rostered hours on the Saturday or Sunday shifts fall between midnight Friday and midnight Sunday;</li></ul> <p>will be paid for at the rate of 200% of the minimum hourly rate, except on public holidays where the rate is 300% of the minimum hourly rate.</p> <p>(c) Subject to clause 21.3, a casual employee working a roster mentioned in clause 21.2(b) or relieving a permanent employee working a roster mentioned in clause 21.2(b) will be paid at the rate of 200% of the casual minimum hourly rate for all time worked in excess of, or outside, the ordinary hours of the shift they are working, except on public holidays where the rate is 300% of the casual minimum hourly rate.</p> <p>21.3 Six day and seven day roster employees</p> <p>(a) All time worked in excess of or outside ordinary hours of an afternoon shift or a rotating night shift by a 6 day roster employee or a 7 day roster employee will be paid at 215% of the minimum hourly rate.</p> <p>(b) All time worked in excess of or outside ordinary hours of a permanent night shift by a 6 day roster employee or a 7 day roster employee will be paid at 225% of the minimum hourly rate.</p> <p>NOTE: Where clause 21.3 refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable.</p> <p>21.4 Minimum payment for overtime on Saturday and Sunday</p> <p>An employee called on to work overtime on a Saturday or Sunday (that is not continuous with work started on the previous day) will be paid for at least 3 hours at the appropriate rate.</p> <p>21.5 Reasonable additional hours</p> <p>Subject to the NES, an employer may require an employee to work reasonable additional hours in addition to their rostered hours, in which case the employee will be paid the applicable overtime rates.</p> <p>21.6 Averaging overtime payments</p> <p>An employer and an employee employed in a classification in Schedule B—Staff Employees may agree to average overtime payments over a length of a defined period.</p> <p>21.11 Time off instead of payment for overtime</p> <p>(a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.</p> <p>(b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 21.11.</p> <p>(c) An agreement must state each of the following:</p> <p>(i) the number of overtime hours to which it applies and when those hours were worked;</p> <p>(ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;</p>	



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;</p> <p>(iv) that any payment mentioned in clause 21.11(c)(iii) must be made in the next pay period following the request.</p> <p>NOTE: An example of the type of agreement required by clause 21.11 is set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 21.11 can also be made by an exchange of emails between the employee and employer, or by other electronic means.</p> <p>(d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.</p> <p>EXAMPLE: By making an agreement under clause 21.11 an employee who worked 2 overtime hours is entitled to 2 hours' time off.</p> <p>(e) Time off must be taken:</p> <p>(i) within the period of 6 months after the overtime is worked; and</p> <p>(ii) at a time or times within that period of 6 months agreed by the employee and employer.</p> <p>(f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 21.11 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.</p> <p>(g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 21.11(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.</p> <p>(h) The employer must keep a copy of any agreement under clause 21.11 as an employee record.</p> <p>(i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.</p> <p>(j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 21.11 will apply, including the requirement for separate written agreements under clause 21.11(b) for overtime that has been worked.</p> <p>NOTE: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65A(3) of the Act).</p> <p>(k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 21.11 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.</p> <p>NOTE: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 21.11.</p>	



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term								
			<p><b>29. Public holidays</b></p> <p>29.1 Public holidays are provided for in the NES.</p> <p>29.2 Substitution of recognised public holidays</p> <p>(a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES.</p> <p>(b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.</p> <p>29.3 Employee not required to work on a public holiday</p> <p>An employee who is not required to work on a public holiday which would otherwise have been a working day for that employee will be paid for that day at the employee's classification rate.</p> <p>29.4 Employee required to work on a recognised public holiday</p> <p>(a) Subject to clause 29.4(c), an employee who is required to work on a public holiday is to be paid at the rate of 200% of the relevant minimum hourly rate prescribed by Schedule A—Production and Engineering Employees and Schedule B—Staff Employees for work performed during ordinary hours, in addition to the payment prescribed by clause 29.3.</p> <p>(b) Subject to clause 29.4(c), work performed in excess of ordinary hours on a public holiday is to be paid at the rate of 300% of the relevant minimum hourly rate prescribed by Schedule A—Production and Engineering Employees and Schedule B—Staff Employees.</p> <p>(c) In addition to the amounts paid in clauses 29.4(a) and 29.4(b) above, an employee will be paid the following additional shift penalties for working on a public holiday:</p> <table><tr><th>Type of shift</th><th>Additional penalty (% of minimum hourly rate)</th></tr><tr><td>Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift</td><td>30</td></tr><tr><td>Overtime hours for 6 or 7 day roster employee – Permanent night shift</td><td>50</td></tr><tr><td>Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift</td><td>30</td></tr></table>	Type of shift	Additional penalty (% of minimum hourly rate)	Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift	30	Overtime hours for 6 or 7 day roster employee – Permanent night shift	50	Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift	30	
Type of shift	Additional penalty (% of minimum hourly rate)											
Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift	30											
Overtime hours for 6 or 7 day roster employee – Permanent night shift	50											
Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift	30											



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term		Explanation of the Effect of Proposed Agreement Term
			Overtime hours for 6 or 7 day roster employee – Permanent night shift	50	
			NOTE 1: Where clause 29.4 refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable. NOTE 2: See also clauses C.1.4, D.1.4, D.2.4, D.2.8, C.1.8 and D.1.8. 29.5 Notice of public holidays to be worked (other than employees working shifts of up to 8.5 ordinary hours) (a) On a date agreed, the employer will nominate which public holidays will be worked in the following 12 months by employees (other than employees working shifts of up to 8.5 ordinary hours on weekdays), provided that work will not be carried out on 2 of such holidays. (b) If the employer does not require employees to work on a public holiday (as nominated in clause 29.5(a)) the employer must give the employees as much notice as possible of this decision. (c) If the notice required by clause 29.5(b) is less than 4 weeks inclusive of the public holiday, an employee who was rostered to work on the public holiday is to be paid for ordinary hours as if the public holiday had been worked. (d) If the employer decides not to require work to be performed on a public holiday because of a strike or ban, employees, other than those involved in the strike or ban, are to be paid at their classification rate for ordinary hours. 29.6 Employees working Monday to Friday shifts of up to 8.5 ordinary hours (a) An employee who only works shifts of up to 8.5 ordinary hours on weekdays cannot, as an integral part of their roster cycle, be rostered for ordinary hours on public holidays. Such employees may, however, in exceptional circumstances, be required to work on public holidays to meet operational needs.		
	7.12 Where un-rostered overtime work is necessary it must be arranged so that Employees have at least 10 consecutive hours' break between work on successive shifts.		21.7 Rest period after working overtime (a) Length of the rest period When overtime work is necessary it will be arranged where possible for employees to have at least 10 consecutive hours off duty between the work of successive days. (b) Where the employee does not get a 10 hour rest (i) The following conditions apply to an employee who works so much overtime that the employee has not had at least 10 consecutive hours off duty between the end of the employee's ordinary hours of work on one day and the start of the employee's ordinary hours of work on the next day: • the employee will be released from duty after that overtime is finished until the		<b>On balance, more beneficial than Award</b>  The Proposed Agreement requires 10 consecutive hours break between work on successive where un-rostered overtime is worked.  The Award states that "where possible" it will be arranged for employees to have at least 10 consecutive hours off duty. If this occurs under the Award, additional entitlements apply including release from duty without loss of pay until the employee has had a 10 hour break and pay consequences if this does not occur.  On balance, the Proposed Agreement is more





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			employee has had 10 consecutive hours off duty, and <ul style="list-style-type: none"><li>there will be no loss of pay for ordinary hours of work time which occur during this absence.</li></ul> (ii) The following conditions apply to an employee who, on the instructions of the employer, resumes or continues work without having had 10 consecutive hours off duty in accordance with clause 21.7(b)(i): <ul style="list-style-type: none"><li>the employee will be paid at 200% of the minimum hourly rate during ordinary hours and after that until the employee is released from duty;</li><li>the employee will then be entitled to be absent for 10 consecutive hours; and</li><li>there will be no loss of pay for ordinary hours of work time which occur during this absence.</li></ul>	beneficial than the Award as it requires a 10 consecutive hour break between work, rather than just "where possible".
	7.13 In calculating overtime, each shift is to be treated separately.		21.1 In calculating overtime, except for clause 21.8, each day is to be treated separately.	<b>Different to Award</b>  The Proposed Agreement requires overtime to be calculated on a per shift basis. The Award provides that each day is to be treated separately other than in circumstances of call-back under clause 21.8.
	7.14 Call back  (a) An Employee who is recalled to work overtime after leaving the workplace (whether the Employee was notified before or after leaving the workplace) will be paid for at least four hours work at the rate under clause 7.11(a), for each time the Employee is recalled.  (b) The provisions of sub-clause (a) do not apply in the following cases:  (i) where it is customary for an Employee to return to the workplace to perform a specific job outside of the Employee's ordinary working hours; or  (ii) where the overtime is continuous (subject to a reasonable meal break) with the end or start of ordinary working time.  (c) Overtime worked on a call back of less than four hours will not be regarded as overtime for the purposes of a rest period if the actual time worked is less than four hours on any recall or on each of any recalls.		21.8 Call-back  (a) Where an employer requires an employee to return to work overtime after leaving the mine (regardless of whether or not the employee is notified before or after leaving):  (i) the employee must be paid at the overtime rate for not less than 4 hours for each time the employee is recalled; and  (ii) except where unforeseen circumstances arise, the employee will not be required to work the full 4 hours if the job to be performed is completed within a shorter period.  (b) Clause 21.8(a) does not apply where:  (i) it is customary for the employee to return to the mine to perform a specific job outside their ordinary working hours; or  (ii) the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of the employee's ordinary working hours.  21.9 Call-back less than four hours  Overtime worked in the circumstances set out in clause 21.8 will not be regarded as overtime for the purposes of a rest period as set out in clause 21.7, where the actual time worked on a recall is less than 4 hours.	<b>Less beneficial than Award</b>  The Proposed Agreement provides that an employee who is recalled to work overtime after leaving the workplace (whether the employee was notified before or after leaving the workplace) will be paid for at least four hours work at the unrostered overtime rate for each time they are recalled. This does not apply: <ul style="list-style-type: none"><li>where it is customary for an Employee to return to the workplace to perform a specific job outside the Employee's ordinary working hours; or</li><li>where the overtime is continuous (subject to a reasonable meal break) with the end or start of ordinary working time.</li></ul> Overtime worked on a call-back of less than four hours will not be regarded as overtime for the purposes of a rest period if the actual time worked is less than four hours on any recall or on each of any recalls.  The Award provides that in circumstances of a recall, the employee is not required to work the full four (4) hours if the work is completed within a shorter period of time. There is no equivalent provision in the Proposed Agreement.
	7.15 Where an Employee undertakes Company approved training outside of the Employee's normal shift patterns, either:  (a) The Employee will be given time off in lieu for the period of the training delivery; or  (b) The Company may elect to make payment to the Employee in accordance with overtime rates for the period of the training delivery.		N/A	<b>Substantially the same as Award</b>  There is no equivalent provision in the Award regarding what happens if an employee is required to undertake training outside of an employee's normal shift patterns.  However, any time worked outside of an employee's ordinary hours of work is overtime and under the



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
				Award, employees would be entitled to overtime rates or could agree to time off in lieu of overtime.  The difference is that under the Proposed Agreement, the Company can elect to provide TOIL without the agreement of the employee, instead of payment.
	7.16 Minimum Annual Salary and Night Shift Allowance (when applicable) will be averaged over a year and paid fortnightly in arrears.		<b>19. Payment of wages</b>  NOTE: Regulations 3.33(3) and 3.46(1)(g) of Fair Work Regulations 2009 set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.  19.1 Unless otherwise agreed between the employer and the majority of employees, wages will be paid weekly.  19.2 Wages will be paid by cheque or electronic funds transfer (EFT).  19.3 In the absence of agreement to the contrary, not more than one week's pay will be kept in hand by the employer.  19.4 Upon termination of employment, wages due to an employee will be paid on the day of such termination or forwarded by post, within 72 hours, to the last address notified in writing by the employee. Provided that where payment is normally made by EFT, the wages due to an employee may be transferred into the employee's account within 72 hours of the termination of employment.  19.5 Subject to all relevant laws, an employer and an individual employee may agree to a salary sacrifice arrangement. The obligations of the employer in respect of payment of remuneration will be satisfied by the employer complying with such an arrangement provided that the salary sacrificed amount and the residual wages combined are not less than the classification rate otherwise payable.  19.6 An employee absent from work is not entitled to payment for the period of absence unless paid absence is agreed by the employer or permitted by this award or the law.	<b>Less beneficial than Award</b>  Under the Proposed Agreement, employees are paid fortnightly whereas the Award provides for weekly payment unless agreed between the employer and the majority of employees.  The Award also provides for payments on termination to be made within 72 hours of termination of employment whereas there is no equivalent provision under the Proposed Agreement.
	7.17 Payment will be by electronic funds transfer to a bank account in Australia nominated by the Employee.		<b>19. Payment of wages</b>  19.2 Wages will be paid by cheque or electronic funds transfer (EFT).	<b>Substantially the same as Award</b>  The Proposed Agreement and the Award provide for payment of wages by electronic funds transfer.
	7.18 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.		N/A	<b>More beneficial than Award</b>  The Proposed Agreement confirms eligibility for employees to participate in the Company's Incentive Program. There is no equivalent provision in the Award, therefore the Proposed Agreement is more beneficial.
	7.19 Without limiting clause 3.1, the Company has a policy that provides for accident pay and may be amended by the Company from time to time, provided that accident pay for any Employee will not be less than the Employee would receive if an accident pay clause in a modern award applied to that Employee, but for this Agreement. Night Shift Allowance is payable on accident pay, in accordance with clause 7.10 (if eligible).		18. Accident pay  18.1 An employee in receipt of weekly payments under the provisions of applicable workers compensation legislation will be entitled to receive accident pay from the employer subject to the following conditions and limitations:  18.2 Payment to be made during incapacity  An employer must pay, or cause to be paid, accident pay during the incapacity of an employee, within the meaning of the applicable workers compensation legislation:	<b>Substantially the same as the Award</b>  Under the Proposed Agreement, employees are entitled to accident pay in accordance with Company policies which will be no less than the accident pay entitlements in the Award.



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(a) until such incapacity ceases; or</p> <p>(b) until a period of:</p> <p>(i) 78 weeks has expired from the date of the injury for injuries that occurred before 1 November 2018; or</p> <p>(ii) 52 weeks has expired from the date of the injury for injuries that occurred after 1 November 2018;</p> <p>whichever event occurs first, even if the employer terminates the employee's employment within the period.</p> <p>18.3 Meaning of accident pay</p> <p>For the purposes of clause 18, accident pay means:</p> <p>(a) Initial 39 week period—regardless of when injury occurred</p> <p>For the initial period of 39 weeks from the date of injury, a weekly payment representing the difference between the weekly amount of compensation paid to the employee under the applicable workers compensation legislation and the weekly amount that would have been received by virtue of this award had the employee been on paid personal leave at the date of the injury (provided the latter amount is greater than the former amount).</p> <p>(b) Subsequent period—injury occurred before 1 November 2018</p> <p>For a further period of 39 weeks a weekly payment representing the difference between the weekly amount of compensation paid to the employee under the applicable workers compensation legislation and the rate prescribed from time to time for the classification of the incapacitated employee at the date of the injury (provided the latter amount is greater than the former amount).</p> <p>(c) Subsequent period—injury occurred on or after 1 November 2018</p> <p>For a further period of 13 weeks a weekly payment representing the difference between the weekly amount of compensation paid to the employee under the applicable workers compensation legislation and the rate prescribed from time to time for the classification of the incapacitated employee at the date of the injury (provided the latter amount is greater than the former amount).</p> <p>18.4 Pro rata payments</p> <p>In respect of incapacity for part of a week the amount payable to the employee as accident pay will be a direct pro rata.</p> <p>18.5 When not entitled to payment</p> <p>An employee will not be entitled to any payment under clause 18 in respect of any period of paid annual leave or long service leave, or for any paid public holiday.</p> <p>18.6 Redemptions</p> <p>In the event that an employee receives a lump sum in redemption of weekly payments under the applicable workers compensation legislation, the liability of the employer to pay accident pay as herein provided will cease from the date of such redemption.</p> <p>18.7 Damages independent of the Acts</p> <p>Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under clause 18 and</p>	

Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			the employee will not be entitled to any further accident pay thereafter.  18.8 Calculation of the period of incapacity  (a) The period of incapacity for work starts on the first day of incapacity, which may be after the date of injury.  (b) Intermittent absences arising from the one injury are cumulative when assessing the period of incapacity.	
	7.20 Electrical Licences  Where the Company requires an Employee to obtain or maintain a HV Switching or State Electrical Licence, the Company will reimburse the Employee for:  (a) the cost of the licence; and  (b) the cost of any required training course that has been approved in advance by the Company.		N/A	<b>More beneficial than Award</b>  The Proposed Agreement provides for reimbursement of the cost of obtaining or maintaining a HV Switching or State Electrical licence and the cost of any required training course where the Company requires an Employee to hold such licences.  There is no equivalent entitlement under the Award.
8 SUPERANNUATION	8.1 Employees are allowed a personal choice of complying superannuation fund, to receive superannuation contributions on their behalf. In the event the Employee does not elect a superannuation fund, superannuation will be paid to the Employee's stapled fund. If the Employee does not have a stapled fund, contributions are to be made by the Company to a default superannuation fund which offers a MySuper product. The Company reserves the right to change its default fund at any time.  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 Minimum Annual Salary otherwise payable under this Agreement (or contractual annual salary if higher, in accordance with clause 7.4) in order to pay this amount into the Employee's nominated superannuation fund.  8.4 Employee Superannuation Co-Contribution is offered at the discretion of the Company to participating Employees, who have completed a written election application, on the following conditions:  (a) Subject to subclause(c), The Company may, at its discretion, review, vary or cease the Employee Co-Contribution Policy at any time. This includes where there are changes in Australian Taxation Office practice, tax rulings, legislation, or legislative interpretation.  (b) The Employee may cease Employee Co-Contribution at any time by 30 days' notice and submitting a completed election form.  (c) The Company may cease Co-Contribution at any time by 30 days' notice.  (d) Company and Employee Co-Contributions will cease during periods of unpaid leave unless otherwise agreed by the	<b>Section 116B – Employer's obligation to make superannuation contributions</b>  An employer must make contributions to a superannuation fund for the benefit of an employee so as to avoid liability to pay superannuation guarantee charge under the Superannuation Guarantee Charge Act 1992 in relation to the employee.	<b>19. Payment of wages</b>  19.5 Subject to all relevant laws, an employer and an individual employee may agree to a salary sacrifice arrangement. The obligations of the employer in respect of payment of remuneration will be satisfied by the employer complying with such an arrangement provided that the salary sacrificed amount and the residual wages combined are not less than the classification rate otherwise payable.  <b>20. Superannuation</b>  20.1 Superannuation contributions for defined benefit members  The employer is permitted to make superannuation contributions to a superannuation fund or scheme in relation to a default fund employee who is a defined benefit member of the fund or scheme.	<b>More beneficial than the Award</b>  While the Proposed Agreement and the Award both allow the Company to make superannuation contributions to a complying superannuation fund (which may include a defined benefit fund) and allows the Company and employee to enter into salary sacrifice arrangements, the Proposed Agreement additionally provides for eligibility to access the Employee Superannuation Co-Contribution entitlements under the Employee Superannuation Co-Contribution Policy.  Therefore, the Proposed Agreement is more beneficial.  <b>Consistent with NES</b>  The Proposed Agreement is consistent with the NES because the Proposed Agreement requires the Company to make superannuation contributions to Employees in accordance with the Superannuation Guarantee (Administration) Act.



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>Company.</p> <p>(e) Company and Employee Co-Contributions are calculated in accordance with the Employee Co-Contribution Policy, as amended from time to time.</p> <p>(f) All contributions will only be paid into one superannuation fund for each Employee. Contributions made to and earnings received from a superannuation fund must be preserved in the fund until the Employee reaches preservation age or meet any other legislative and fund criteria allowing the release of superannuation benefits.</p> <p>(g) Company and Employee Co-Contributions will incur tax at the rate under the taxation legislation applicable at the time.</p>			
9 HOURS OF WORK	<p>9.1 An Employee's work will usually be completed in their rostered hours. Employees may be required to work reasonable un-rostered overtime.</p> <p>9.2 A rostered shift includes shift handovers to be completed as directed at the start and end of the shift.</p> <p>9.3 An Employee's rostered hours of work are inclusive of an Employee's ordinary hours and rostered overtime each week.</p> <p>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 Minimum Annual Salary is calculated on the basis that Employees will work these hours.</p>	<p><b>Section 62 - Maximum weekly hours of work</b></p> <p>(1) An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:</p> <p>(a) for a full - time employee--38 hours; or</p> <p>(b) for an employee who is not a full - time employee--the lesser of:</p> <p>(i) 38 hours; and</p> <p>(ii) the employee's ordinary hours of work in a week.</p> <p>Employee may refuse to work unreasonable additional hours</p> <p>(2) The employee may refuse to work additional hours (beyond those referred to in paragraph (1)(a) or (b)) if they are unreasonable.</p> <p>Determining whether additional hours are reasonable</p> <p>(3) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:</p> <p>(a) any risk to employee health and safety from working the additional hours;</p> <p>(b) the employee's personal circumstances, including family responsibilities;</p>	<p><b>14. Ordinary hours of work</b></p> <p>An employee's ordinary hours of work are 35 hours per week, or an average of 35 hours per week over a roster cycle.</p> <p><b>15. Rostering arrangements</b></p> <p>15.1 Rostering of hours and length of shifts</p> <p>(a) The employer may determine the type of rosters to be worked.</p> <p>(b) The employer may determine the shift length to be worked where the ordinary hours of the shift do not exceed 10 hours.</p> <p>(c) A shift may be longer than 10 ordinary hours:</p> <p>(i) where the employer and the majority of affected employees agree; or</p> <p>(ii) in the case of a dispute, as resolved in accordance with clause 32—Dispute resolution.</p> <p>15.2 Shift starting and finishing times</p> <p>(a) The employer may determine the start and finish times of shifts up to 10 ordinary hours.</p> <p>(b) Shifts of longer than 10 ordinary hours will be worked between the starting and finishing times:</p> <p>(i) that are agreed between the employer and the majority of affected employees; or</p> <p>(ii) in the case of a dispute, that are resolved in accordance with clause 32—Dispute resolution.</p> <p>15.3 Number and spread of shifts</p> <p>The number and spread of ordinary shifts may be varied by the employer and, in the case of dispute, are resolved in accordance with the procedure in clause 32—Dispute resolution.</p> <p>15.4 Starting and finishing places</p> <p>(a) The starting and finishing place of a shift:</p> <p>(i) are to be agreed between the employer and the majority of affected employees; or</p> <p>(ii) in the absence of agreement, are resolved in accordance with the procedure in clause 32—Dispute resolution.</p> <p>(b) At underground mines, the designated starting and finishing place will be on</p>	<p><b>Different to Award</b></p> <p>Under the Proposed Agreement, employees are required to work rostered shifts which are inclusive of ordinary hours and rostered overtime.</p> <p>The effect of this clause is that full-time employees may be required to work in excess of an average of 35 ordinary hours per week and part-time employees may be required to work in excess of their ordinary hours per week.</p> <p>The Proposed Agreement sets out that employees are required to work their rostered hours including rostered and un-rostered overtime. The Proposed Agreement states that Employees acknowledge the requirement is reasonable having regard to the operational requirements of the workplace and the roster arrangements. The effect of clause 3.3 of the Proposed Agreement means that, if the requirement to work additional hours is unreasonable, having regard to the factors outlined in section 62 of the FW Act, employees have an ongoing right to refuse to work the additional hours. This includes a right to refuse to work rostered overtime, where the request to work that rostered overtime is unreasonable. The reasonableness of a request to work overtime takes into account the following:</p> <ul style="list-style-type: none"><li>any risk to Employee health and safety from working the additional hours;</li><li>the Employee's personal circumstances, including family responsibilities;</li><li>the needs of the workplace or enterprise in which the Employee is employed;</li><li>whether the Employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;</li><li>any notice given by the Company of any request or requirement to work the additional</li></ul>





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>(c) the needs of the workplace or enterprise in which the employee is employed;</p> <p>(d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;</p> <p>(e) any notice given by the employer of any request or requirement to work the additional hours;</p> <p>(f) any notice given by the employee of his or her intention to refuse to work the additional hours;</p> <p>(g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;</p> <p>(h) the nature of the employee's role, and the employee's level of responsibility;</p> <p>(i) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;</p> <p>(j) any other relevant matter.</p> <p>Authorised leave or absence treated as hours worked</p> <p>(4) For the purposes of subsection (1), the hours an employee works in a week are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised:</p> <p>(a) by the employee's employer; or</p> <p>(b) by or under a term or condition of the employee's employment; or</p> <p>by or under a law of the Commonwealth, a State or a Territory, or an instrument in force under such a law.</p>	<p>the surface.</p> <p>15.5 Changes to rosters</p> <p>The employer will not change an employee's place on a roster, except in accordance with Part 7—Workplace delegates, Consultation and Dispute Resolution and where:</p> <p>(a) the employer has given one week's notice of any change to the employee; or</p> <p>(b) where less than one week's notice is given, the employee is paid at overtime rates for all work from the time of change of shift until the one week's notice referred to in clause 15.5(a) would have expired.</p> <p>15.6 Rostered days off</p> <p>(a) Period of notice to be given</p> <p>Subject to clause 15.6, where an employee is entitled to a rostered day off (RDO) the employer must advise the employee of this:</p> <p>(i) at least 4 weeks before the day the employee is to take off; or</p> <p>(ii) within a lesser period agreed by the employer and the majority of employees in the mine or sections affected.</p> <p>(b) An employee required to work on an RDO</p> <p>An employer will only require an employee to work on an RDO after attempts by the employer to cover the casual vacancy by other means have failed.</p> <p>(c) Payment for working on an RDO</p> <p>An employee will be paid for working ordinary hours on an RDO at either:</p> <p>(i) ordinary rates for time worked during ordinary hours on an RDO, and</p> <ul style="list-style-type: none"> <li>the employee will then take a day off in lieu before the end of the employee's next roster cycle;</li> <li>this day in lieu will be selected by the employee provided that at least one week's notice is given to the employer; and</li> <li>the employee will be allowed this day off unless the operations of the mine will be affected by the absence,</li> </ul> <p>or</p> <p>(ii) overtime rates for the time worked during ordinary hours on the RDO, without any day off in lieu.</p> <p>(d) An employee will be paid overtime rates for all time worked outside or in excess of the ordinary hours for that day or shift.</p> <p>(e) RDO moved to another day</p> <p>(i) An employer, with the agreement of the majority of employees affected, may move the RDO of these employees to another day in the case of:</p> <ul style="list-style-type: none"> <li>a breakdown of machinery;</li> <li>a failure or shortage of electric power;</li> <li>meeting the requirements of the mine; or</li> <li>an emergency situation.</li> </ul> <p>(ii) In the case of another day being substituted for the RDO, the new day becomes the RDO and the original day becomes an ordinary working day.</p>	<p>hours;</p> <ul style="list-style-type: none"> <li>any notice given by the Employee of his or her intention to refuse to work the additional hours;</li> <li>the usual patterns of work in the industry, or the part of an industry, in which the Employee works;</li> <li>the nature of the Employee's role, and the employee's level of responsibility;</li> <li>whether the additional hours are in accordance with averaging terms included in a modern award or enterprise agreement that applies to the Employee, or with an averaging arrangement agreed to by the Company and Employee;</li> <li>any other relevant matter.</li> </ul> <p>However, the acknowledgement in the Proposed Agreement that the hours are reasonable may result in the hours being held to be reasonable in any dispute about the reasonableness of additional hours within a roster.</p> <p><u>Shift handovers</u></p> <p>Under the Proposed Agreement, shift handovers are to be completed in rostered hours as directed at the start and end of the shift. There is no equivalent term in the Award or NES.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(iii) An individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.</p> <p>(f) RDO falling on a recognised public holiday</p> <p>An employee who is entitled to an RDO which falls on a public holiday is, at the discretion of the employer:</p> <p>(i) to be paid at the employee's classification rate; or</p> <p>(ii) to be credited with one day for each such public holiday (payable at ordinary rates).</p> <p>(g) RDO not to fall on a recognised public holiday for an employee working Monday to Friday shifts of up to 8.5 ordinary hours</p> <p>(i) Subject to clause 15.6(g)(ii), where an employee is working Monday to Friday shifts of up to 8.5 hours and the employee's roster does not include work on a public holiday, an RDO is not to be scheduled to fall on a public holiday.</p> <p>(ii) Where a public holiday is prescribed after an employee who is covered by clause 15.6(g)(i) has been notified of an RDO, and that holiday falls on the employee's RDO, the employer must allow the employee to take the RDO on an alternative weekday.</p>	
	<p>9.5 The Company shall determine each Employee's roster, including the days and hours of work, and starting and finishing times and places from time to time, and may change any such rosters, days and hours of work or starting and finishing times and places, 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;</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>(c) before implementing any change to ordinary starting and finishing times for an Employee's roster or a change to starting and finishing places on a site, the Company will provide at least 7 days' notice of the change, unless:</p> <p>(i) the Company and the Employee otherwise agree;</p> <p>(ii) there are operational requirements that require a shorter period of notice to be given; or</p> <p>(iii) the Employee is moving permanently from a non-continuous day roster to a rotating continuous roster, in which case the reference to 7 days is to be taken as 14 days.</p> <p>(d) For the avoidance of doubt, clauses 10 to 15 of the model consultation term incorporated by clause 25 apply to a change to the regular roster or ordinary hours of work of Employees.</p>	<p><b>Section 62 - Maximum weekly hours of work</b></p> <p>(1) An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:</p> <p>(a) for a full - time employee--38 hours; or</p> <p>(b) for an employee who is not a full - time employee--the lesser of:</p> <p>(i) 38 hours; and</p> <p>(ii) the employee's ordinary hours of work in a week.</p> <p>Employee may refuse to work unreasonable additional hours</p> <p>(2) The employee may refuse to work additional hours (beyond those referred to in paragraph (1)(a) or (b)) if they are unreasonable.</p> <p>Determining whether additional hours are reasonable</p> <p>(3) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:</p> <p>(a) any risk to employee health and</p>	<p><b>14. Ordinary hours of work</b></p> <p>An employee's ordinary hours of work are 35 hours per week, or an average of 35 hours per week over a roster cycle.</p> <p><b>15. Rostering arrangements</b></p> <p>15.1 Rostering of hours and length of shifts</p> <p>(a) The employer may determine the type of rosters to be worked.</p> <p>(b) The employer may determine the shift length to be worked where the ordinary hours of the shift do not exceed 10 hours.</p> <p>(c) A shift may be longer than 10 ordinary hours:</p> <p>(i) where the employer and the majority of affected employees agree; or</p> <p>(ii) in the case of a dispute, as resolved in accordance with clause 32—Dispute resolution.</p> <p>15.2 Shift starting and finishing times</p> <p>(a) The employer may determine the start and finish times of shifts up to 10 ordinary hours.</p> <p>(b) Shifts of longer than 10 ordinary hours will be worked between the starting and finishing times:</p> <p>(i) that are agreed between the employer and the majority of affected employees; or</p> <p>(ii) in the case of a dispute, that are resolved in accordance with clause 32—Dispute resolution.</p> <p>15.3 Number and spread of shifts</p> <p>The number and spread of ordinary shifts may be varied by the employer and, in the case of dispute, are resolved in accordance with the procedure in clause 32—Dispute resolution.</p> <p>15.4 Starting and finishing places</p>	<p><b>Less beneficial than the Award</b></p> <p><u>Rostering of hours</u></p> <p>As set out in clause 9.3 of the Proposed Agreement and confirmed in Appendix 1, rostered hours are inclusive of ordinary hours and rostered overtime. Where employees are required to work in excess of 10 hours per day, the remaining hours in excess of 10 hours per day up to 12.5 hours are considered to be rostered overtime.</p> <p><u>Shift lengths</u></p> <p>Under the Award, employees may be required to work shifts of up to 10 ordinary hours unless the employer and a majority of affected employees agree or as determined under dispute provisions of the Award.</p> <p>It is the Company's position that the Award permits employees to work shifts of a total of more than 10 hours without majority agreement so long as the extra hours are treated as overtime. Based on the Company's position, the Proposed Agreement is substantially the same as the Award because employees can be required to work shifts up to 10 ordinary hours in length, with any longer shifts being made up of rostered overtime (e.g. a 12.5 hour shift could comprise a maximum of 10 ordinary hours and 2.5 hours of rostered overtime).</p> <p>The MEU's position previously communicated to the Company is that such shifts can only be worked by majority agreement, even if the extra hours are overtime. Based on the MEU's position, the Proposed Agreement is less beneficial than the Award because it enables the Company to roster shifts greater than 10 hours in length without</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>safety from working the additional hours;</p> <p>(b) the employee's personal circumstances, including family responsibilities;</p> <p>(c) the needs of the workplace or enterprise in which the employee is employed;</p> <p>(d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;</p> <p>(e) any notice given by the employer of any request or requirement to work the additional hours;</p> <p>(f) any notice given by the employee of his or her intention to refuse to work the additional hours;</p> <p>(g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;</p> <p>(h) the nature of the employee's role, and the employee's level of responsibility;</p> <p>(i) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;</p> <p>(j) any other relevant matter.</p> <p>Authorised leave or absence treated as hours worked</p> <p>(4) For the purposes of subsection (1), the hours an employee works in a week are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised:</p> <p>(a) by the employee's employer; or</p> <p>(b) by or under a term or condition of the employee's employment; or</p> <p>by or under a law of the Commonwealth, a State or a Territory, or an instrument in force under such a law.</p>	<p>(a) The starting and finishing place of a shift:</p> <p>(i) are to be agreed between the employer and the majority of affected employees; or</p> <p>(ii) in the absence of agreement, are resolved in accordance with the procedure in clause 32—Dispute resolution.</p> <p>(b) At underground mines, the designated starting and finishing place will be on the surface.</p> <p>15.5 Changes to rosters</p> <p>The employer will not change an employee's place on a roster, except in accordance with Part 7—Workplace delegates, Consultation and Dispute Resolution and where:</p> <p>(a) the employer has given one week's notice of any change to the employee; or</p> <p>(b) where less than one week's notice is given, the employee is paid at overtime rates for all work from the time of change of shift until the one week's notice referred to in clause 15.5(a) would have expired.</p> <p>15.6 Rostered days off</p> <p>(a) Period of notice to be given</p> <p>Subject to clause 15.6, where an employee is entitled to a rostered day off (RDO) the employer must advise the employee of this:</p> <p>(i) at least 4 weeks before the day the employee is to take off; or</p> <p>(ii) within a lesser period agreed by the employer and the majority of employees in the mine or sections affected.</p> <p>(b) An employee required to work on an RDO</p> <p>An employer will only require an employee to work on an RDO after attempts by the employer to cover the casual vacancy by other means have failed.</p> <p>(c) Payment for working on an RDO</p> <p>An employee will be paid for working ordinary hours on an RDO at either:</p> <p>(i) ordinary rates for time worked during ordinary hours on an RDO, and</p> <ul style="list-style-type: none"><li>• the employee will then take a day off in lieu before the end of the employee's next roster cycle;</li><li>• this day in lieu will be selected by the employee provided that at least one week's notice is given to the employer; and</li><li>• the employee will be allowed this day off unless the operations of the mine will be affected by the absence,</li></ul> <p>or</p> <p>(ii) overtime rates for the time worked during ordinary hours on the RDO, without any day off in lieu.</p> <p>(d) An employee will be paid overtime rates for all time worked outside or in excess of the ordinary hours for that day or shift.</p> <p>(e) RDO moved to another day</p> <p>(i) An employer, with the agreement of the majority of employees affected, may move the RDO of these employees to another day in the case of:</p>	<p>collective agreement.</p> <p><u>Starting and finishing times</u></p> <p>Under the Proposed Agreement, the Company can determine starting and finishing times. Under the Award, the start and finish times for shifts over 10 ordinary hours are as agreed with a majority of affected employees or as is determined under the dispute provisions of the Award.</p> <p>It is the Company's position that the Award permits the Company to determine the starting and finishing times of shifts of a total of more than 10 hours per day without majority agreement so long as the hours in excess of 10 hours are treated as overtime. Based on the Company's position, the Agreement is substantially the same at the Award, as the Proposed Agreement does not permit the Company to roster shifts longer than 10 ordinary hours and the Award doesn't require majority agreement for shifts that are longer than 10 hours, where the additional hours are rostered overtime.</p> <p>The MEU's position previously communicated to the Company is that shifts of a total of more than 10 hours can only be worked between the starting and finishing times agreed with a majority of employees, even if the extra hours are overtime. Based on the MEU's position, the Proposed Agreement is less beneficial than the Award, as the Proposed Agreement permits the Company to determine starting and finishing times without collective agreement for shifts longer than 10 hours.</p> <p><u>Starting and finishing places</u></p> <p>Under the Proposed Agreement, the Company can determine the starting and finishing places of shifts. The Award states that starting and finishing places:</p> <ul style="list-style-type: none"><li>• are to be agreed between the employer and the majority of affected employees; or</li><li>• in the absence of agreement, are resolved in accordance with the dispute procedure in the Award;</li><li>• at underground mines, the designated starting and finishing place will be on the surface.</li></ul> <p>This difference means that, under the Proposed Agreement, the Company could nominate a new start and finish location for shifts without employee agreement. There is no limit on the locations that the Company can nominate. For example, if the start and finish location is within the boundary of a mine site, this could mean unpaid travel time for employees to that starting and finishing location after entering the mine site. This means the Proposed</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<ul style="list-style-type: none"><li>• a breakdown of machinery;</li><li>• a failure or shortage of electric power;</li><li>• meeting the requirements of the mine; or</li><li>• an emergency situation.</li></ul> <p>(ii) In the case of another day being substituted for the RDO, the new day becomes the RDO and the original day becomes an ordinary working day.</p> <p>(iii) An individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.</p> <p>(f) RDO falling on a recognised public holiday</p> <p>An employee who is entitled to an RDO which falls on a public holiday is, at the discretion of the employer:</p> <p>(i) to be paid at the employee's classification rate; or</p> <p>(ii) to be credited with one day for each such public holiday (payable at ordinary rates).</p> <p>(g) RDO not to fall on a recognised public holiday for an employee working Monday to Friday shifts of up to 8.5 ordinary hours</p> <p>(i) Subject to clause 15.6(g)(ii), where an employee is working Monday to Friday shifts of up to 8.5 hours and the employee's roster does not include work on a public holiday, an RDO is not to be scheduled to fall on a public holiday.</p> <p>(ii) Where a public holiday is prescribed after an employee who is covered by clause 15.6(g)(i) has been notified of an RDO, and that holiday falls on the employee's RDO, the employer must allow the employee to take the RDO on an alternative weekday.</p> <p><b>16. Breaks</b></p> <p>16.1 Paid meal breaks—rostered hours</p> <p>(a) An employee is entitled to a meal break of 30 minutes without deduction from pay for each 5 hours worked during rostered hours.</p> <p>(b) Subject to clause 16.1(c) , an employee will not be required to work for more than 5 hours without a meal break.</p> <p>(c) Where the employer and employee agree that the employee will work for more than 5 hours without a break, then the employee will, unless otherwise agreed, be paid for any work beyond 5 hours at the applicable overtime rates until a meal break is taken.</p> <p>16.2 Paid meal break—non-rostered overtime</p> <p>(a) If an employee is required to work more than one and a half hours past their rostered shift (exclusive of crib time) then the employee will, unless agreed otherwise, before starting this overtime be allowed at least 30 minutes for a paid meal break . This meal break is to be paid at the rate applying immediately before the meal break is taken.</p> <p>(b) The employee will also, unless notified the previous day of the requirement to work overtime, be supplied with a meal or paid a meal allowance (see clause A.8.2 (c) and clause B.3.1 (c)).</p> <p>(c) After each 4 hours of overtime worked after a paid meal break the employee will have a further paid meal break of 30 minutes duration and either be supplied with a meal or be paid a meal allowance.</p>	<p>Agreement is less beneficial than the Award.</p> <p><u>Breaks between shifts</u></p> <p>Under the Proposed Agreement, employees working shifts are entitled to 10 consecutive hours between shifts as compared to the Award which provides for 10 consecutive hours only after overtime and where possible.</p> <p><u>Change of place on a roster</u></p> <p>Both the Proposed Agreement and the Award provide for one weeks' notice of any change to an employee's place on a roster.</p> <p>While the Proposed Agreement allows this notice period to be reduced or not provided only by agreement, the Award permits the notice period to be reduced or not provided if the employee is paid at overtime rates for all work from the time of change of shift until the one week's notice would have expired.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(d) Where the overtime worked is not continuous with an employee's rostered hours, the employee is entitled to a meal break of 30 minutes without deduction from pay after each 5 hours worked.</p> <p><b>21.7 Rest period after working overtime</b></p> <p>(a) Length of the rest period</p> <p>When overtime work is necessary it will be arranged where possible for employees to have at least 10 consecutive hours off duty between the work of successive days.</p> <p>(b) Where the employee does not get a 10 hour rest</p> <p>(i) The following conditions apply to an employee who works so much overtime that the employee has not had at least 10 consecutive hours off duty between the end of the employee's ordinary hours of work on one day and the start of the employee's ordinary hours of work on the next day:</p> <ul style="list-style-type: none"><li>• the employee will be released from duty after that overtime is finished until the employee has had 10 consecutive hours off duty, and</li><li>• there will be no loss of pay for ordinary hours of work time which occur during this absence.</li></ul> <p>(ii) The following conditions apply to an employee who, on the instructions of the employer, resumes or continues work without having had 10 consecutive hours off duty in accordance with clause 21.7(b)(i) :</p> <ul style="list-style-type: none"><li>• the employee will be paid at 200% of the minimum hourly rate during ordinary hours and after that until the employee is released from duty;</li><li>• the employee will then be entitled to be absent for 10 consecutive hours; and</li><li>• there will be no loss of pay for ordinary hours of work time which occur during this absence.</li></ul>	
	9.6 Employees are entitled to paid 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. Reasonable time taken to travel to or from the area designated by the Company for crib will be counted as time worked and will not be counted as part of the paid meal break.		<p><b>16. Breaks</b></p> <p>16.1 Paid meal breaks—rostered hours</p> <p>(a) An employee is entitled to a meal break of 30 minutes without deduction from pay for each 5 hours worked during rostered hours.</p> <p>(b) Subject to clause 16.1(c) , an employee will not be required to work for more than 5 hours without a meal break.</p> <p>(c) Where the employer and employee agree that the employee will work for more than 5 hours without a break, then the employee will, unless otherwise agreed, be paid for any work beyond 5 hours at the applicable overtime rates until a meal break is taken.</p> <p>16.2 Paid meal break—non-rostered overtime</p> <p>(a) If an employee is required to work more than one and a half hours past their rostered shift (exclusive of crib time) then the employee will, unless agreed otherwise, before starting this overtime be allowed at least 30 minutes for a paid meal break . This meal break is to be paid at the rate applying immediately before the meal break is taken.</p> <p>(b) The employee will also, unless notified the previous day of the requirement to work overtime, be supplied with a meal or paid a meal allowance (see clause A.8.2 (c) and clause B.3.1 (c)).</p> <p>(c) After each 4 hours of overtime worked after a paid meal break the employee</p>	<p><b>Less beneficial than Award</b></p> <p><u>Rostered hours</u></p> <p>While both the Proposed Agreement and the Award require a paid meal break for each 5 hours worked during rostered hours, the Award also requires payment at overtime rates if the employer and employee agree for the employee to work through the meal break until the employee is provided with a meal break. This is not provided for in the Proposed Agreement.</p> <p><u>Un-rostered overtime</u></p> <p>Under the Award, employees are entitled to a paid meal break of at least 30 minutes if required to work un-rostered overtime and before commencing un-rostered overtime. The employee is then entitled to a paid meal break of 30 minutes after each 4 hours of overtime and entitled to a meal allowance.</p> <p>Under the Proposed Agreement, the employee is entitled to a paid meal break every 5 hours worked including un-rostered overtime.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			will have a further paid meal break of 30 minutes duration and either be supplied with a meal or be paid a meal allowance.  (d) Where the overtime worked is not continuous with an employee's rostered hours, the employee is entitled to a meal break of 30 minutes without deduction from pay after each 5 hours worked.	
10 PUBLIC HOLIDAYS	10.1 The following days are public holidays: (a) New Year's Day (b) Australia Day (c) Good Friday (d) Easter Saturday (for Employees rostered to work ordinary hours on that day except in Western Australia) (e) Easter Sunday (f) Easter Monday (g) Anzac Day (h) Sovereign's Birthday (i) in Queensland, Christmas Eve (from 6pm) (j) in South Australia only, Christmas Eve (from 7pm) (k) Christmas Day (l) Boxing Day (m) in South Australia only, New Years' Eve (from 7pm) (n) any additional day observed by the local community and gazetted at the place of work as a holiday (o) any day gazetted in addition or in lieu of one of these holidays.	<b>Section 115 - Meaning of public holiday</b> The public holidays (1) The following are public holidays: (a) each of these days: (i) 1 January (New Year's Day); (ii) 26 January (Australia Day); (iii) Good Friday; (iv) Easter Monday; (v) 25 April (Anzac Day); (vi) the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory); (vii) 25 December (Christmas Day); (viii) 26 December (Boxing Day); (b) any other day, or part - day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part - day, or a kind of day or part - day, that is excluded by the regulations from counting as a public holiday.  Substituted public holidays under State or Territory laws (2) If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part - day is substituted for a day or part - day that would otherwise be a public holiday because of subsection (1), then the substituted day or part - day is the public holiday .  Substituted public holidays under modern awards and enterprise agreements (3) A modern award or enterprise agreement may include terms providing for an employer and employee to agree on the substitution of a day or part - day for a day or part - day that would otherwise be a public holiday because of subsection (1) or (2).  Substituted public holidays for award/agreement free employees (4) An employer and an award/agreement free employee may agree on the substitution of a day or part - day for a day or part - day that would otherwise be a	<b>29. Public holidays</b> 29.1 Public holidays are provided for in the NES. 29.2 Substitution of recognised public holidays (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES. (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.	<b>Substantially the same as the Award and NES</b>  The Proposed Agreement provides for days to be public holidays in substantially the same terms as the Award and NES.





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term						
		public holiday because of subsection (1) or (2).  Note: This Act does not exclude State and Territory laws that deal with the declaration, prescription or substitution of public holidays, but it does exclude State and Territory laws that relate to the rights and obligations of an employee or employer in relation to public holidays (see paragraph 27(2)(j)).								
	<p>10.2 The Company provides continuous maintenance services to mining operations, and continues work across rosters for 24/7, 365/6 days a year shift coverage. It rosters shifts for all Employees and continues operating throughout public holiday periods to support safe and productive continuity of operations.</p> <p>10.3 The Company notifies Employees of their roster in advance, so Employees know:</p> <p>(a) the public holidays that fall within their rostered working time; and</p> <p>(b) the two non-rostered public holidays each year that will not fall within their rostered working time. These days will be determined by the Employee's roster and are not required to be the same for any Employees.</p> <p>10.5 Where an Employee is rostered to work one or more public holidays during the course of a year, the Company is requesting the Employee to work those days and the Company believes this is a reasonable request, in light of its workplaces, its operational requirements, its business requirements, the work performed by Employees, and the remuneration structure.</p> <p>10.6 The FW Act provides a right for an Employee to refuse the request, if having regard to section 114 of the NES:</p> <p>(a) the request by the Company is unreasonable; or</p> <p>(b) a refusal by the Employee is reasonable.</p> <p>10.7 If an Employee who is requested to work wishes to refuse that request to work, they should communicate this refusal and their reasons, in writing, to their Supervisor in accordance with the BHP Working Public Holidays Policy as amended from time to time. An employee can also raise a dispute in relation to working on a public holiday in accordance with clause 22 of this Agreement.</p> <p>10.8 This sub-clause does not apply to an Employee on a period of pre-approved leave on the public holiday.</p>	<p><b>Section 114 - Entitlement to be absent from employment on public holiday</b></p> <p>Employee entitled to be absent on public holiday</p> <p>(1) An employee is entitled to be absent from his or her employment on a day or part - day that is a public holiday in the place where the employee is based for work purposes.</p> <p>Reasonable requests to work on public holidays</p> <p>(2) However, an employer may request an employee to work on a public holiday if the request is reasonable.</p> <p>(3) If an employer requests an employee to work on a public holiday, the employee may refuse the request if:</p> <p>(a) the request is not reasonable; or</p> <p>(b) the refusal is reasonable.</p> <p>(4) In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:</p> <p>(a) the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;</p> <p>(b) the employee's personal circumstances, including family responsibilities;</p> <p>(c) whether the employee could reasonably expect that the employer might request work on the public holiday;</p> <p>(d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;</p> <p>(e) the type of employment of the employee (for example, whether full - time, part - time, casual or shiftwork);</p> <p>(f) the amount of notice in advance of</p>	<p><b>27. Public holidays</b></p> <p>29.3 Employee not required to work on a public holiday</p> <p>An employee who is not required to work on a public holiday which would otherwise have been a working day for that employee will be paid for that day at the employee's classification rate.</p> <p>29.4 Employee required to work on a recognised public holiday</p> <p>(a) Subject to clause 29.4(c), an employee who is required to work on a public holiday is to be paid at the rate of 200% of the relevant minimum hourly rate prescribed by Schedule A—Production and Engineering Employees and Schedule B—Staff Employees for work performed during ordinary hours, in addition to the payment prescribed by clause 29.3.</p> <p>(b) Subject to clause 29.4(c), work performed in excess of ordinary hours on a public holiday is to be paid at the rate of 300% of the relevant minimum hourly rate prescribed by Schedule A—Production and Engineering Employees and Schedule B—Staff Employees.</p> <p>(c) In addition to the amounts paid in clauses 29.4(a) and 29.4(b) above, an employee will be paid the following additional shift penalties for working on a public holiday:</p> <table><tr><th>Type of shift</th><th>Additional penalty (% of minimum hourly rate)</th></tr><tr><td>Ordinary hours – Afternoon shift / rotating night shift</td><td>30</td></tr><tr><td>Ordinary hours – Permanent night shift</td><td>50</td></tr></table>	Type of shift	Additional penalty (% of minimum hourly rate)	Ordinary hours – Afternoon shift / rotating night shift	30	Ordinary hours – Permanent night shift	50	<p><b>Substantially the same as Award and NES</b></p> <p>The Proposed Agreement sets out that the Company rosters shifts for all employees including on public holidays and that the Company notifies employees of their rosters in advance, including those public holidays that fall within their rostered working time. The Proposed Agreement confirms that an employee will not work on at least two public holidays each year.</p> <p>The Proposed Agreement confirms that the rostering of an employee on a public holiday is a request to work on the public holiday and that the Company believes that the request is reasonable having regard to its workplaces, its operational requirements, its business requirements, the work performed by employees, and the remuneration structure.</p> <p>Notwithstanding the terms of clause 10 of the Proposed Agreement, the effect of clause 3.3 of the Proposed Agreement means that employees have the right to refuse the request to work on a public holiday if the request is not reasonable, or the refusal to work the public holiday is reasonable, having regard to factors outlined in section 114 of the FW Act.</p> <p>This is because the NES provides that an employee is entitled to be absent from work on a public holiday. However, the NES also allows the Company to request an employee to work on a public holiday if the request is reasonable.</p> <p>If an employer requests an employee to work on a public holiday, the employee may refuse the request if:</p> <ul style="list-style-type: none"><li>the request is not reasonable; or</li><li>the refusal is reasonable.</li></ul> <p>In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:</p> <ul style="list-style-type: none"><li>the nature of the Company's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;</li></ul>
Type of shift	Additional penalty (% of minimum hourly rate)									
Ordinary hours – Afternoon shift / rotating night shift	30									
Ordinary hours – Permanent night shift	50									





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term		Explanation of the Effect of Proposed Agreement Term
		the public holiday given by the employer when making the request; (g) in relation to the refusal of a request--the amount of notice in advance of the public holiday given by the employee when refusing the request; (h) any other relevant matter.	Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift	30	<ul style="list-style-type: none"><li>the Employee's personal circumstances, including family responsibilities;</li><li>whether the Employee could reasonably expect that the Company might request work on the public holiday;</li><li>whether the Employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;</li><li>the type of employment of the Employee (for example, whether full time, part time, casual or shiftwork);</li><li>the amount of notice in advance of the public holiday given by the Company when making the request;</li><li>in relation to the refusal -the amount of notice in advance of the public holiday given by the Employee when refusing the request; and</li><li>any other relevant matter.</li></ul> <p>However, the Company may seek to rely on the acknowledgments in the Proposed Agreement about its operational requirements as supporting its position that a request from the Company for an employee to work on a public holiday is reasonable and that a refusal to work on a public holiday by the employee is not reasonable.</p> <p><u>Notice of public holidays to be worked</u></p> <p>Under the Award, the employer must nominate which public holidays will be worked in the following 12 months by employees. The Proposed Agreement only requires employees to be notified in advance.</p> <p>Accordingly, the Proposed Agreement is less beneficial than the Award.</p> <p><u>Non-rostered public holidays</u></p> <p>It is the Company's position that the Proposed Agreement is substantially the same as the Award as both the Proposed Agreement and the Award provide for an employee to have two non-rostered public holidays in a year (nominated by the Company) and these two days do not necessarily need to be the same for all employees.</p> <p>The MEU's position previously communicated to the Company is that the Proposed Agreement is less beneficial than the Award on the basis that the Award requires that all employees must have the same two public holidays designated as non-working days, and that these two non-working public holidays must be communicated on a date agreed</p>
			Overtime hours for 6 or 7 day roster employee – Permanent night shift	50	
			NOTE 1: Where clause 29.4 refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable. NOTE 2: See also clauses C.1.4, D.1.4, D.2.4, D.2.8, C.1.8 and D.1.8. 29.5 Notice of public holidays to be worked (other than employees working shifts		



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term						
			<p>of up to 8.5 ordinary hours)</p> <p>(a) On a date agreed, the employer will nominate which public holidays will be worked in the following 12 months by employees (other than employees working shifts of up to 8.5 ordinary hours on weekdays), provided that work will not be carried out on 2 of such holidays.</p> <p>(b) If the employer does not require employees to work on a public holiday (as nominated in clause 29.5(a)) the employer must give the employees as much notice as possible of this decision.</p> <p>(c) If the notice required by clause 29.5(b) is less than 4 weeks inclusive of the public holiday, an employee who was rostered to work on the public holiday is to be paid for ordinary hours as if the public holiday had been worked.</p> <p>(d) If the employer decides not to require work to be performed on a public holiday because of a strike or ban, employees, other than those involved in the strike or ban, are to be paid at their classification rate for ordinary hours.</p> <p>29.6 Employees working Monday to Friday shifts of up to 8.5 ordinary hours</p> <p>(a) An employee who only works shifts of up to 8.5 ordinary hours on weekdays cannot, as an integral part of their roster cycle, be rostered for ordinary hours on public holidays. Such employees may, however, in exceptional circumstances, be required to work on public holidays to meet operational needs.</p>	<p>with the workforce.</p>						
	<p>10.4 The Minimum Annual Salary rates set out in Appendix 1 include compensation for 11 public holidays worked. If an Employee works more than 11 public holidays in a 12 month remuneration period (measured from 1 September – 31 August September), the Employee will be paid at double the Minimum Hourly Roster Rate for all work performed on those additional public holiday(s).</p> <p>10.9 No separate payment will be made where a public holiday falls during a non-rostered day.</p> <p>10.10 Christmas Day and Boxing Day payment</p> <p>(a) Any employee who works the following shifts will be paid a fixed payment of \$750 (gross) per shift (<b>Xmas Payment</b>) worked in addition to their annual salary:</p> <p>(i) Night shift commencing 24 December.</p> <p>(ii) Day shift commencing 25 December.</p> <p>(iii) Night shift commencing 25 December.</p> <p>(iv) Day shift commencing 26 December.</p> <p>(b) The Xmas Payment amount may be increased during the life of the Agreement at the Company's discretion.</p>	<p><b>Section 116 - Payment for absence on public holiday</b></p> <p>If, in accordance with this Division, an employee is absent from his or her employment on a day or part - day that is a public holiday, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work on the day or part - day.</p> <p>Note: If the employee does not have ordinary hours of work on the public holiday, the employee is not entitled to payment under this section. For example, the employee is not entitled to payment if the employee is a casual employee who is not rostered on for the public holiday, or is a part - time employee whose part - time hours do not include the day of the week on which the public holiday occurs.</p>	<p>29.4 Employee required to work on a recognised public holiday</p> <p>(a) Subject to clause 29.4(c), an employee who is required to work on a public holiday is to be paid at the rate of 200% of the relevant minimum hourly rate prescribed by Schedule A—Production and Engineering Employees and Schedule B—Staff Employees for work performed during ordinary hours, in addition to the payment prescribed by clause 29.3.</p> <p>(b) Subject to clause 29.4(c), work performed in excess of ordinary hours on a public holiday is to be paid at the rate of 300% of the relevant minimum hourly rate prescribed by Schedule A—Production and Engineering Employees and Schedule B—Staff Employees.</p> <p>(c) In addition to the amounts paid in clauses 29.4(a) and 29.4(b) above, an employee will be paid the following additional shift penalties for working on a public holiday:</p> <table><tr><th>Type of shift</th><th>Additional Penalty (% of minimum, hourly rate)</th></tr><tr><td>Ordinary hours – Afternoon shift / rotating night shift</td><td>30</td></tr><tr><td>Ordinary hours – Permanent night shift</td><td>50</td></tr></table>	Type of shift	Additional Penalty (% of minimum, hourly rate)	Ordinary hours – Afternoon shift / rotating night shift	30	Ordinary hours – Permanent night shift	50	<p><b>Different to the Award</b></p> <p>Under the Proposed Agreement, employees are compensated for 11 public holidays in their over Award annual salaries.</p> <p>It may be possible for an employee to work more than 11 public holidays and still have two non-rostered public holidays in the remuneration period, depending on the number of public holidays that fall within that period (including because of the number of substitute public holidays), although this is likely to only occur rarely.</p> <p>If an employee is required to work rostered hours on any additional public holidays (i.e. the 12<sup>th</sup> and any additional public holidays worked in the period 1 September – 31 August), then employees are entitled to be paid at 200% of the minimum hourly roster rate of pay in addition to their Minimum Annual Salary for the day.</p> <p>Employees who work on Christmas Day and/or Boxing Day will receive a payment of \$750 (gross) in addition to their Minimum Annual Salary, any additional public holiday payment and/or un-rostered overtime payment.</p> <p>The Award prescribes payment for public holidays at 250% - 300% of the ordinary hourly rate of pay and also prescribes additional shift penalties to be paid in addition to the public holiday penalties.</p> <p>Un-rostered overtime on a public holiday under the Proposed Agreement is paid at triple time under the Proposed Agreement.</p>
Type of shift	Additional Penalty (% of minimum, hourly rate)									
Ordinary hours – Afternoon shift / rotating night shift	30									
Ordinary hours – Permanent night shift	50									



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term			Explanation of the Effect of Proposed Agreement Term						
			<table><tr><td>Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift</td><td>30</td><td></td></tr><tr><td>Overtime hours for 6 or 7 day roster employee – Permanent night shift</td><td>50</td><td></td></tr></table> <p>NOTE 1: Where clause 29.4 refers to a rate as being calculated as a percentage of the minimum hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual minimum hourly rate where applicable.</p> <p>NOTE 2: See also clauses C.1.4, D.1.4, D.2.4, D.2.8, C.1.8 and D.1.8.</p>			Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift	30		Overtime hours for 6 or 7 day roster employee – Permanent night shift	50		
Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift	30											
Overtime hours for 6 or 7 day roster employee – Permanent night shift	50											
11 ANNUAL LEAVE	<p>11.1 Annual leave entitlements will be provided for in accordance with the NES.</p> <p>11.2 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.</p> <p>11.3 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 not less than 272 ordinary hours per year on Sundays,</p> <p>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.</p>	<p><b>Section 87 - Entitlement to annual leave</b></p> <p>Amount of leave</p> <p>(1) For each year of service with an employer (other than periods of employment as a casual employee of the employer), an employee is entitled to:</p> <p>(a) 4 weeks of paid annual leave; or</p> <p>(b) 5 weeks of paid annual leave, if:</p> <p>(i) a modern award applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards; or</p> <p>(ii) an enterprise agreement applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards; or</p> <p>(iii) the employee qualifies for the shiftworker annual leave entitlement under subsection (3) (this relates to award/agreement free employees).</p> <p>Note: Section 196 affects whether the FWC may approve an enterprise agreement covering an employee, if the employee is covered by a modern award that is in operation and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards.</p> <p>Accrual of leave</p>	<p><b>24. Annual leave</b></p> <p>24.1 Annual leave entitlements are provided for in the NES. Clause 24 supplements those entitlements and provides industry specific detail.</p> <p>24.2 Entitlement to annual leave</p> <p>(a) An employee is 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 award for each year of employment is a cumulative total of 175 ordinary hours (5 weeks).</p> <p>(b) An employee who:</p> <p>(i) is a 7 day roster employee; or</p> <p>(ii) works a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays,</p> <p>is entitled annually to an additional 35 ordinary hours (one week) of annual leave.</p> <p>24.3 Accrual of annual leave</p> <p>Employees, other than casual employees, accrue annual leave at the following rate:</p> <table><tr><td><b>For employees who would be entitled to annual leave</b></td><td><b>Hours of annual leave for each completed week of employment:</b></td></tr><tr><td></td><td></td></tr></table>	<b>For employees who would be entitled to annual leave</b>	<b>Hours of annual leave for each completed week of employment:</b>			<p><b>Substantially the same as the Award and more beneficial than NES</b></p> <p>The Proposed Agreement provides for five (5) weeks of annual leave for all employees per year as compared to four (4) weeks of annual leave which is provided for under the NES. The Award also provides for five (5) weeks of annual leave for employees.</p> <p>The Proposed Agreement provides for an additional week of annual leave (six (6) weeks of annual leave per year) for employees who meet the following criteria:</p> <ul style="list-style-type: none"><li>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</li><li>works a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays.</li></ul> <p>The Award also provides an additional week of annual leave for shiftworkers who meet the same criteria. Both the Proposed Agreement and the Award provide for more beneficial entitlements for shift workers as compared to the NES.</p> <p>Accordingly, the Proposed Agreement is <b>substantially the same</b> as the Award and more beneficial than the NES.</p>				
<b>For employees who would be entitled to annual leave</b>	<b>Hours of annual leave for each completed week of employment:</b>											



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term				
		<p>(2) An employee's entitlement to paid annual leave accrues progressively during a year of service (other than periods of employment as a casual employee of the employer) according to the employee's ordinary hours of work, and accumulates from year to year.</p> <p>Note: If an employee's employment ends during what would otherwise have been a year of service, the employee accrues paid annual leave up to when the employment ends.</p> <p>Award/agreement free employees who qualify for the shiftworker entitlement</p> <p>(3) An award/agreement free employee qualifies for the shiftworker annual leave entitlement if:</p> <p>(a) the employee:</p> <p>(i) is employed in an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week; and</p> <p>(ii) is regularly rostered to work those shifts; and</p> <p>(iii) regularly works on Sundays and public holidays; or</p> <p>(b) the employee is in a class of employees prescribed by the regulations as shiftworkers for the purposes of the National Employment Standards.</p> <p>(4) However, an employee referred to in subsection (3) does not qualify for the shiftworker annual leave entitlement if the employee is in a class of employees prescribed by the regulations as not being qualified for that entitlement.</p> <p>(5) Without limiting the way in which a class may be described for the purposes of paragraph (3)(b) or subsection (4), the class may be described by reference to one or more of the following:</p> <p>(a) a particular industry or part of an industry;</p> <p>(b) a particular kind of work;</p> <p>(c) a particular type of employment.</p> <p><b>Section 88 - Taking paid annual leave</b></p> <p>(1) Paid annual leave may be taken for a period agreed between an employee and his or her employer.</p> <p>(2) The employer must not unreasonably refuse to agree to a request by the employee</p>	<table><tr><td>175 hours (5 weeks)</td><td>3.3654</td></tr><tr><td>210 hours (6 weeks)</td><td>4.0385</td></tr></table> <p>24.4 Deduction of annual leave</p> <p>For each period of annual leave taken by an employee the ordinary hours of rostered shifts that would have been worked by the employee will be deducted from the employee's accrued annual leave entitlement.</p> <p>24.5 Amount of annual leave to be taken</p> <p>Unless otherwise agreed between the employer and employee, annual leave will be given and taken in not more than 3 periods, one of which will be of at least 3 weeks' duration.</p>	175 hours (5 weeks)	3.3654	210 hours (6 weeks)	4.0385	
175 hours (5 weeks)	3.3654							
210 hours (6 weeks)	4.0385							



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		to take paid annual leave.		
	11.4 Annual leave taken during employment or paid out on termination of employment is paid at an employee's Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4). Night Shift Allowance is payable on annual leave, in accordance with clause 7.10 (if eligible).	<p><b>Section 90 - Payment for annual leave</b></p> <p>(1) If, in accordance with this Division, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.</p> <p>(2) If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.</p>	<p>24.6 Payment and loading</p> <p>An employee who takes annual leave must be paid the greater of:</p> <p>(a) the employee's ordinary rate of pay plus a loading of 20% of that rate; or</p> <p>(b) the employee's rostered earnings for the period of annual leave, which includes all rostered overtime and rostered public holidays (paid at 200%), but, not including shift allowances, except in the case of 7 day roster employees.</p> <p>NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is be entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the Act).</p> <p>24.7 When payment will be made for annual leave for employees paid by cheque</p> <p>An employee who is usually paid by cheque will be paid for a period of annual leave in accordance with the employee's normal pay period(s), unless an employee requests that payment of the entire period of annual leave be made prior to the employee commencing leave.</p> <p>24.8 Electronic funds transfer (EFT) payment of annual leave</p> <p>Despite anything else in clause 24, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.</p>	<p><b>Different to Award and NES</b></p> <p>The Proposed Agreement provides that annual leave is paid (on termination and during employment) for at the minimum annual salary rate which incorporates payment for rostered public holidays, rostered overtime, shift loadings etc and will include night shift allowance if eligible.</p> <p>The Award provides that the employees must be paid at the greater of during periods of annual leave:</p> <ul style="list-style-type: none"><li>the employee's ordinary rate of pay plus a 20% loading; or</li><li>the employee's rostered earnings for the period including rostered overtime and rostered public holidays not including shift allowances except in the case of a 7 day shiftworker.</li></ul> <p>The NES provides for payment of annual leave at the employee's base rate of pay.</p> <p>Since the Proposed Agreement does not provide for the separate payment of annual leave loading, the Proposed Agreement is different to the Award.</p> <p>However, given other benefits provided under the Agreement and since the minimum annual salary incorporates payment of overtime, penalties (where applicable) and other loadings and allowances, the Proposed Agreement is more beneficial than the Award and NES.</p>
	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 Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4) plus Night Shift Allowance (if eligible).	<p><b>Section 92 - Paid annual leave must not be cashed out except in accordance with permitted cashing out terms</b></p> <p>Paid annual leave must not be cashed out, except in accordance with:</p> <p>(a) cashing out terms included in a modern award or enterprise agreement under section 93, or</p> <p>(b) an agreement between an employer and an award/agreement free employee under subsection 94(1).</p> <p>Section 93 - Modern awards and enterprise agreements may include terms relating to cashing out and taking paid annual leave</p> <p><b>Terms about cashing out paid annual leave</b></p> <p>(1) A modern award or enterprise agreement may include terms providing for the cashing out of paid annual leave by an employee.</p> <p>(2) The terms must require that:</p> <p>(a) paid annual leave must not be cashed out</p>	<p>24.14 Cashing out of annual leave</p> <p>(a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 24.14 .</p> <p>(b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 24.14.</p> <p>(c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.</p> <p>(d) An agreement under clause 24.14 must state:</p> <p>(i) the amount of leave to be cashed out and the payment to be made to the employee for it; and</p> <p>(ii) the date on which the payment is to be made.</p> <p>(e) An agreement under clause 24.14 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.</p> <p>(f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.</p> <p>(g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 140 hours (4 weeks).</p> <p>(h) The maximum amount of accrued paid annual leave that may be cashed out</p>	<p><b>More beneficial than Award and consistent with the NES</b></p> <p>Both the Proposed Agreement and the Award allow for cash out of annual leave subject to:</p> <ul style="list-style-type: none"><li>the employee retaining an annual leave balance of four (4) weeks;</li><li>entering into a separate agreement in writing in relation to each cash out; and</li><li>the payment must be not less than what the employee would have been paid had the employee taken the leave at the time the payment is made.</li></ul> <p>Accordingly, the Proposed Agreement is consistent with the Award and the NES.</p> <p>However, since the Proposed Agreement does not limit the cash out of annual leave to two weeks each year, the Proposed Agreement is <b>more beneficial</b> than the Award.</p>





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and</p> <p>(b) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and</p> <p>(c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.</p>	<p>in any period of 12 months is 70 hours (2 weeks).</p> <p>(i) The employer must keep a copy of any agreement under clause 24.14 as an employee record.</p> <p>NOTE 1: Under section 344 of the Act , an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 24.14 .</p> <p>NOTE 2: Under section 345(1) of the Act , a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.14 .</p> <p>NOTE 3: An example of the type of agreement required by clause 24.14 is set out at Schedule H—Agreement to Cash Out Annual Leave . There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave .NOTE 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 22.12.</p> <p>NOTE 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 22.12.</p> <p>NOTE 3: An example of the type of agreement required by clause 22.12 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave.</p>	
	<p>11.6 The Company may shut down all or part of its operation for a particular period (Temporary Shutdown Period) and require affected Employees to take leave during that period provided:</p> <p>(a) unless a shorter period is agreed, the Company must give the affected Employees 28 days' written notice (or as soon as reasonably practicable for any Employee who is engaged after the notice is given to other Employees);</p> <p>(b) an affected Employee may elect to cover the temporary shutdown period by taking one, or a combination of two or more, of the following:</p> <p>(i) paid annual leave if the Employee has accrued an entitlement to such leave;</p> <p>(ii) leave without pay;</p> <p>(iii) if agreed by the Company, annual leave in advance;</p> <p>(c) if the Employee does not make an election, or leave in advance is not agreed, that covers the whole of the Temporary Shutdown Period, then the Company may reasonably direct the Employee in writing to take a period of paid annual leave to which the Employee has accrued an entitlement; and</p> <p>(d) if a temporary shutdown period includes a day or part-day that is a public holiday and would have been a working day for the Employee had the Employee not been on leave in accordance with this sub-clause, the Employee is taken not to be on leave on that day or part-day.</p> <p>(e) An employee can also raise a dispute in relation to</p>	<p>Terms about requirements to take paid annual leave</p> <p>(3) A modern award or enterprise agreement may include terms requiring an employee, or allowing for an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable.</p> <p>Terms about taking paid annual leave</p> <p>(4) A modern award or enterprise agreement may include terms otherwise dealing with the taking of paid annual leave.</p>	<p>24.9 Shutdown</p> <p>(a) Despite the terms of clauses 24.10 to 24.12 , clause 24.9 applies if an employer intends to shutdown all or part of its operation for a particular period ( temporary shutdown period ) and wishes to require affected employees to take leave during that period.</p> <p>(b) The employer must give the affected employees 28 days' written notice of a temporary shutdown period, or any shorter period agreed between them and the employer.</p> <p>(c) The employer must give written notice of a temporary shutdown period to any employee who is engaged after the notice is given under clause 24.9(b) and who will be affected by that period, as soon as reasonably practicable after the employee is engaged.</p> <p>(d) The following applies to any affected employee during a temporary shutdown period:</p> <p>(i) the employee may elect to cover the temporary shutdown period by doing one, or a combination of 2 or more, of the following:</p> <ul style="list-style-type: none"><li>• taking paid annual leave if the employee has accrued an entitlement to such leave;</li><li>• taking leave without pay;</li><li>• taking annual leave in advance in accordance with an agreement under clause 24.13 .</li></ul> <p>(ii) if the employee does not make an election under clause 24.9(d)(i) that covers the whole of the temporary shutdown period, then the employer may direct the employee to take a period of paid annual leave to which the employee has accrued an entitlement.</p>	<p><b>Substantially the same as Award and NES</b></p> <p>Both the Proposed Agreement and the Award allow the Company to shut down all or part of its operation for a particular period provided the Company provides employees with 28 days' written notice of the temporary shutdown period.</p> <p>Under both provisions, the Company can direct employees to take a period of annual leave during the shutdown period and if the employee does not have enough annual leave, the Company and employee can agree to take leave without pay or annual leave in advance.</p> <p>The Proposed Agreement is substantially the same as the NES as the NES permits terms which deal with the taking of paid annual leave.</p>





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	rejection of a request to take annual leave in accordance with clause 22 of this Agreement.		<p>(e) A direction by the employer under clause 24.9(d)(ii) :</p> <p>(i) must be in writing; and</p> <p>(ii) must be reasonable.</p> <p>(f) The employee must take paid annual leave in accordance with a direction under clause 24.9(d)(ii) .</p> <p>(g) In determining the amount of paid annual leave to which an employee has accrued an entitlement, any period of paid annual leave taken in advance by the employee, in accordance with an agreement under clause 24.9 , to which an entitlement has not been accrued is to be taken into account.</p> <p>(h) If a temporary shutdown period includes a day or part-day that is a public holiday and would have been a working day for the employee had the employee not been on leave in accordance with clause 24.9 , the employee is taken not to be on leave on that day or part-day.</p> <p>(i) Clauses 24.10 to 24.12 do not apply to a period of annual leave that an employee is required to take during a temporary shutdown period in accordance with clause 24.9 .</p>	
	N/A		<p>24.10 Excessive leave accruals: general provision</p> <p>NOTE: Clauses 24.10 to 24.12 contain provisions, additional to the NES , about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2-2, Division 6 of the Act .</p> <p>(a) An employee has an excessive leave accrual if the employee has accrued more than 350 hours (10 weeks) paid annual leave (or 420 hours (12 weeks) paid annual leave for a shiftworker, as defined by clause 24.2(b) .</p> <p>(b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.</p> <p>(c) Clause 24.11 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.</p> <p>(d) Clause 24.12 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.</p> <p>24.11 Excessive leave accruals: direction by employer that leave be taken</p> <p>(a) If an employer has genuinely tried to reach agreement with an employee under clause 24.10(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.</p> <p>(b) However, a direction by the employer under clause 24.11(a) :</p> <p>(i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 210 hours (6 weeks) when any other paid annual leave arrangements (whether made under clause 24.10 , 24.11 or 24.12 or otherwise agreed by the employer and employee) are taken into account; and</p> <p>(ii) must not require the employee to take any period of paid annual leave of less than 35 hours (one week); and</p> <p>(iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and</p>	<p><b>More beneficial than Award</b></p> <p>The Proposed Agreement does not contain provisions about the treatment of excessive annual leave accruals. Since the Proposed Agreement does not contain the ability to direct employees to take excessive annual leave, the Proposed Agreement is more beneficial than the Award.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.</p> <p>(c) The employee must take paid annual leave in accordance with a direction under clause 24.11(a) that is in effect.</p> <p>(d) An employee to whom a direction has been given under clause 24.11(a) may request to take a period of paid annual leave as if the direction had not been given.</p> <p>NOTE 1: Paid annual leave arising from a request mentioned in clause 24.11(d) may result in the direction ceasing to have effect. See clause 24.11(b)(i) .</p> <p>NOTE 2: Under section 88(2) of the Act , the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.</p> <p>24.12 Excessive leave accruals: request by employee for leave</p> <p>(a) If an employee has genuinely tried to reach agreement with an employer under clause 24.10(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.</p> <p>(b) However, an employee may only give a notice to the employer under clause 24.12(a) if:</p> <p>(i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and</p> <p>(ii) the employee has not been given a direction under clause 24.11(a) that, when any other paid annual leave arrangements (whether made under clause 24.10 , 24.11 or 24.12 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.</p> <p>(c) A notice given by an employee under clause 24.12(a) must not:</p> <p>(i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 210 hours (6 weeks) when any other paid annual leave arrangements (whether made under clause 24.10 , 24.11 or 24.12 or otherwise agreed by the employer and employee) are taken into account; or</p> <p>(ii) provide for the employee to take any period of paid annual leave of less than 35 hours (one week); or</p> <p>(iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or</p> <p>(iv) be inconsistent with any leave arrangement agreed by the employer and employee.</p> <p>(d) An employee is not entitled to request by a notice under clause 24.12(a) more than 175 hours (5 weeks) paid annual leave (or 210 hours (6 weeks) paid annual leave for a shiftworker, as defined by clause 24.2(b) in any period of 12 months.</p> <p>(e) The employer must grant paid annual leave requested by a notice under clause 24.12(a) .</p>	
			<p>24.13 Annual leave in advance</p> <p>(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.</p> <p>(b) An agreement must:</p>	<p><b>Less beneficial than Award</b></p> <p>The Award contains provisions which allow the employer and employees to agree to take a period of annual leave in advance.</p> <p>There are no specific provisions in the Proposed</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(i) state the amount of leave to be taken in advance and the date on which leave is to commence; and</p> <p>(ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.</p> <p>NOTE: An example of the type of agreement required by clause 24.13 is set out at Schedule G —Agreement to Take Annual Leave in Advance . There is no requirement to use the form of agreement set out at Schedule G —Agreement to Take Annual Leave in Advance .</p> <p>(c) The employer must keep a copy of any agreement under clause 24.13 as an employee record.</p> <p>(d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 24.13 , the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.</p>	Agreement which allow the employer and employees to agree to take a period of annual leave in advance, however, clause 11.6(b) of the Proposed Agreement confirms that the employer and employee can agree to take annual leave in advance during a temporary shut down. Since there is no equivalent provision regarding the taking of annual leave in advance in other circumstances, the Proposed Agreement is less beneficial than the Award.
<b>12 PERSONAL/CARER'S LEAVE</b>	<p>12.1 Personal/carer's leave entitlement will be provided for in accordance with the NES and the relevant modern award, provided that:</p> <p>(a) Employees will be credited with their annual entitlement to personal/carer's leave under the NES and in accordance with the relevant modern award;</p> <p>(b) personal/carer's leave accruals for any Employee will not be less than the Employee would have received under a clause in a modern award that would have applied to that Employee but for this Agreement;</p> <p>(c) accrued but untaken 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, or where personal/carer's leave transfers to a new employer) and is paid at the Employee's Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4). Night Shift Allowance is payable on paid personal/carer's leave paid out on termination of employment in accordance with clause 7.10 (if eligible).</p> <p>12.2 Personal/carer's leave is paid at an Employee's Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4). Night Shift Allowance is payable on paid personal/carer's leave in accordance with clause 7.10 (if eligible).</p>	<p><b>Section 96 - Entitlement to paid personal/carer's leave</b></p> <p>Amount of leave</p> <p>(1) For each year of service with an employer (other than periods of employment as a casual employee of the employer), an employee is entitled to 10 days of paid personal/carer's leave.</p> <p>Accrual of leave</p> <p>(2) An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service (other than periods of employment as a casual employee of the employer) according to the employee's ordinary hours of work, and accumulates from year to year.</p> <p><b>Section 97 - Taking paid personal/carer's leave</b></p> <p>An employee may take paid personal/carer's leave if the leave is taken:</p> <p>(a) because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or</p> <p>(b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:</p> <p>(i) a personal illness, or personal injury, affecting the member; or</p> <p>(ii) an unexpected emergency affecting the member.</p> <p>Note 1: The notice and evidence</p>	<p>25. Personal/carer's leave and compassionate leave</p> <p>25.1 Personal/carer's leave and compassionate leave entitlements are provided for in the NES . This clause supplements those entitlements and deals with evidence required to be provided by an employee when taking paid personal/carer's leave or compassionate leave.</p> <p>25.2 Entitlement</p> <p>A full-time employee is entitled to 105 ordinary hours of personal/carer's leave (inclusive of the employee's NES entitlement) on commencing employment and on each anniversary of commencement. Any personal leave which is not taken by an employee must accumulate without limitation.</p> <p>25.3 Evidence required</p> <p>(a) Where requested to do so by the employer, an employee who has taken personal/carer's leave or compassionate leave must provide a medical certificate or such other evidence as will prove to the employer's reasonable satisfaction that the leave was taken for a reason set out in the NES .</p> <p>(b) Where the employer is not satisfied by the evidence provided by an employee under clause 25.3(a) , any dispute may be dealt with in accordance with the procedure at clause 32 — Dispute resolution .</p> <p>25.4 Deduction of personal leave</p> <p>Paid personal/carer's leave taken by an employee must be deducted from the employee's paid personal/carer's leave entitlement as follows:</p> <p>(a) where the absence is for fewer than half the ordinary hours component of the shift, no deduction; or</p> <p>(b) in any other case, the full ordinary hours component of the shift will be deducted.</p> <p><b>33.4 Payments on termination</b></p> <p>In the case of termination of employment, and in addition to any other amounts payable pursuant to this award to an employee on termination, the employee must be paid in accordance with clause 33 .</p> <p>(a) Accrued annual leave</p>	<p><b>More beneficial than Award and NES</b></p> <p><u>Entitlement</u></p> <p>Under the NES, employees are entitled to 10 days' paid personal/carer's leave for each year of service which accrues progressively during a year of service according to an employee's ordinary hours of work and accumulates from year to year. This means that the 10 days of paid personal/carer's leave is pro-rata for part-time employees.</p> <p>Employees can take paid personal/carer's leave in two circumstances:</p> <ul style="list-style-type: none"><li>because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or</li><li>because the employee has to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:<ul style="list-style-type: none"><li>a personal illness, or personal injury, affecting the member; or</li><li>an unexpected emergency affecting the member.</li></ul></li></ul> <p>Employees may be required to provide evidence that would satisfy a reasonable person that the employee is taking the paid personal/carer's leave for the reason specified.</p> <p>Under the Award, employees are entitled to 105 hours of paid personal/carer's leave on commencing employment and on each anniversary of commencement of employment.</p> <p>The Proposed Agreement incorporates both the Award and NES as the minimum entitlement.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>requirements of section 107 must be complied with.</p> <p>Note 2: If an employee has an entitlement to paid personal/carer's leave, the employee may take that leave instead of taking unpaid special parental leave under section 80.</p> <p><b>Section 98 - Employee taken not to be on paid personal/carer's leave at certain times</b></p> <p>Public holidays</p> <p>(1) If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.</p> <p>Period of paid family and domestic violence leave</p> <p>(2) If the period during which an employee takes paid personal/carer's leave includes a period of paid family and domestic violence leave, the employee is taken not to be on paid personal/carer's leave for the period of that paid family and domestic violence leave.</p> <p><b>Section 99 - Payment for paid personal/carer's leave</b></p> <p>If, in accordance with this Subdivision, an employee takes a period of paid personal/carer's leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.</p> <p><b>Section 100 - Paid personal/carer's leave must not be cashed out except in accordance with permitted cashing out terms</b></p> <p>Paid personal/carer's leave must not be cashed out, except in accordance with cashing out terms included in a modern award or enterprise agreement under section 101.</p> <p><b>Section 101 - Modern awards and enterprise agreements may include terms relating to cashing out paid personal/carer's leave</b></p> <p>(1) A modern award or enterprise agreement may include terms providing for the cashing out of paid personal/carer's leave by an employee.</p>	<p>The employee must be paid for all annual leave entitlements, and annual leave accrued in accordance with clause 24.3 , at the employee's base rate of pay.</p> <p>(b) Accrued personal/carer's leave</p> <p>(i) An employee whose employment is terminated:</p> <ul style="list-style-type: none"><li>• by retrenchment;</li><li>• by retirement at or after age 60;</li><li>• by the employer because of ill health; or</li><li>• by death;</li></ul> <p>must, if the employee has 70 or more hours of untaken personal leave entitlement, be paid for that entitlement at the employee's base rate of pay.</p> <p>(ii) When an employer terminates the employment of an employee during a period of absence on paid personal leave, the employee must be paid until the employee has no further accumulation of personal leave or until the employee is fit for duty, whichever occurs first.</p>	<p><u>Personal/carer's leave on termination</u></p> <p>Additionally, the Proposed Agreement confirms:</p> <ul style="list-style-type: none"><li>• that any accrued but untaken 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, or where personal/carer's leave transfers to a new employer); and</li><li>• by personal/carer's leave is payable (during employment and on termination) at the employee's Minimum Annual Salary rate which is inclusive of overtime, loadings, penalties etc and night shift allowance (if eligible). (or paid at any higher contractual salary rate)</li></ul> <p>Under the Award, employees are entitled to have paid personal/carer's leave paid out on termination if the employee has 70 or more hours of untaken personal leave and is terminated:</p> <ul style="list-style-type: none"><li>• by retrenchment;</li><li>• by retirement at or after age 60;</li><li>• by the employer because of ill health;</li><li>• by death.</li></ul> <p>Under the NES and the Award, personal/carer's leave is paid at the employee's base rate of pay and personal/carer's leave is not paid out on termination of employment in any circumstance.</p> <p>Accordingly, the Proposed Agreement is more beneficial than the Award and NES as it provides for paid personal/carer's leave on termination in greater circumstances as compared to the Award.</p> <p><u>Unpaid carer's leave</u></p> <p>While the Proposed Agreement does not expressly provide this, the effect of clause 3.3 of the Proposed Agreement means that employees are also entitled to unpaid carer's leave in accordance with the NES.</p> <p>Employees are also entitled to two days' unpaid carer's leave for each occasions when a member of the employee's immediate family, or a member of the employee's household, requires care of support because of:</p> <ul style="list-style-type: none"><li>• a personal illness, or personal injury, affecting the member; or</li><li>• an unexpected emergency affecting the member.</li></ul> <p>Unpaid carer's leave is only accessible if the employee has no accrued but untaken paid personal/carer's leave.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>(2) The terms must require that:</p> <p>(a) paid personal/carer's leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid personal/carer's leave being less than 15 days; and</p> <p>(b) each cashing out of a particular amount of paid personal/carer's leave must be by a separate agreement in writing between the employer and the employee; and</p> <p>(c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.</p> <p><b>Subdivision B—Unpaid carer's leave</b></p> <p><b>Section 102 - Entitlement to unpaid carer's leave</b></p> <p>An employee is entitled to 2 days of unpaid carer's leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:</p> <p>(a) a personal illness, or personal injury, affecting the member; or</p> <p>(b) an unexpected emergency affecting the member.</p> <p><b>Section 103 - Taking unpaid carer's leave</b></p> <p>(1) An employee may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in section 102.</p> <p>(2) An employee may take unpaid carer's leave for a particular permissible occasion as:</p> <p>(a) a single continuous period of up to 2 days; or</p> <p>(b) any separate periods to which the employee and his or her employer agree.</p> <p>(3) An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carer's leave.</p> <p>Note: The notice and evidence requirements of section 107 must be complied with.</p> <p><b>Section 107 - Notice and evidence requirements</b></p> <p>Notice</p>		



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>(1) An employee must give his or her employer notice of the taking of leave under this Division by the employee.</p> <p>(2) The notice:</p> <p>(a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and</p> <p>(b) must advise the employer of the period, or expected period, of the leave.</p> <p>Evidence</p> <p>(3) An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:</p> <p>(a) if it is paid personal/carer's leave—the leave is taken for a reason specified in section 97; or</p> <p>(b) if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in subsection 103(1); or</p> <p>(c) if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in subsection 105(1); or</p> <p>(d) if it is paid family and domestic violence leave, and the employee has met the requirement specified in paragraph 106B(1)(a)—the leave is taken for the purpose specified in paragraph 106B(1)(b), and the requirement specified in paragraph 106B(1)(c) is met.</p>		
<b>13 COMPASSIONATE LEAVE</b>	<p>13.1 Compassionate leave entitlements will be provided for in accordance with the NES.</p> <p>13.2 Paid compassionate leave is paid at an Employee's Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4). Night Shift Allowance is payable on paid compassionate leave in accordance with clause 7.10 (if eligible).</p>	<p><b>Section 104 - Entitlement to compassionate leave</b></p> <p>(1) An employee is entitled to 2 days of compassionate leave for each occasion (a permissible occasion) when:</p> <p>(a) a member of the employee's immediate family or a member of the employee's household:</p> <p>(i) contracts or develops a personal illness that poses a serious threat to his or her life; or</p> <p>(ii) sustains a personal injury that poses a serious threat to his or her life; or</p> <p>(iii) dies; or</p> <p>(b) a child is stillborn, where the child would have been a member of the employee's</p>	<p>25. Personal/carer's leave and compassionate leave</p> <p>25.1 Personal/carer's leave and compassionate leave entitlements are provided for in the NES . This clause supplements those entitlements and deals with evidence required to be provided by an employee when taking paid personal/carer's leave or compassionate leave.</p> <p>25.3 Evidence required</p> <p>(a) Where requested to do so by the employer, an employee who has taken personal/carer's leave or compassionate leave must provide a medical certificate or such other evidence as will prove to the employer's reasonable satisfaction that the leave was taken for a reason set out in the NES .</p> <p>(b) Where the employer is not satisfied by the evidence provided by an employee under clause 25.3(a) , any dispute may be dealt with in accordance with the procedure at clause 32 — Dispute resolution .</p>	<p><b>More beneficial than Award and NES</b></p> <p>The Proposed Agreement and the Award both confirm that the NES provides for the minimum compassionate leave entitlements for employees.</p> <p>However, the Proposed Agreement additionally confirms that employees will be entitled to paid compassionate leave at the employee's annual salary rate and night shift allowance (if eligible). Under the NES, compassionate leave is payable at the employee's base rate of pay.</p> <p>Accordingly, the Proposed Agreement is substantially the same as the Award and NES generally and more beneficial than the Award and NES in relation to the payment entitlements for paid compassionate leave.</p>





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>immediate family, or a member of the employee's household, if the child had been born alive; or</p> <p>(c) the employee, or the employee's spouse or de facto partner, has a miscarriage.</p> <p>(2) Paragraph (1)(c) does not apply:</p> <p>(a) if the miscarriage results in a stillborn child; or</p> <p>(b) to a former spouse, or former de facto partner, of the employee.</p> <p>Note: For the definition of a stillborn child, see subsection 77A(2).</p> <p><b>Section 105 - Taking compassionate leave</b></p> <p>(1) An employee may take compassionate leave for a particular permissible occasion if the leave is taken:</p> <p>(a) to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in section 104; or</p> <p>(b) after the death of the member of the employee's immediate family or household, or the stillbirth of the child, referred to in section 104; or</p> <p>(c) after the employee, or the employee's spouse or de facto partner, has the miscarriage referred to in section 104.</p> <p>(2) An employee may take compassionate leave for a particular permissible occasion as:</p> <p>(a) a single continuous 2 day period; or</p> <p>(b) 2 separate periods of 1 day each; or</p> <p>(c) any separate periods to which the employee and his or her employer agree.</p> <p>(3) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.</p> <p>Note: The notice and evidence requirements of section 107 must be complied with.</p> <p><b>Section 106 - Payment for compassionate leave (other than for casual employees)</b></p> <p>If, in accordance with this Subdivision, an employee, other than a casual employee, takes a period of compassionate leave, the</p>		



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.</p> <p><b>Section 107 - Notice and evidence requirements</b></p> <p>Notice</p> <p>(1) An employee must give his or her employer notice of the taking of leave under this Division by the employee.</p> <p>(2) The notice:</p> <p>(a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and</p> <p>(b) must advise the employer of the period, or expected period, of the leave.</p> <p>Evidence</p> <p>(3) An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:</p> <p>(a) if it is paid personal/carer's leave—the leave is taken for a reason specified in section 97; or</p> <p>(b) if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in subsection 103(1); or</p> <p>(c) if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in subsection 105(1); or</p> <p>(d) if it is paid family and domestic violence leave, and the employee has met the requirement specified in paragraph 106B(1)(a)—the leave is taken for the purpose specified in paragraph 106B(1)(b), and the requirement specified in paragraph 106B(1)(c) is met.</p>		
<b>14 PARENTAL LEAVE</b>	<p>14.1 Subject to clause 14.2, Employees are entitled to parental leave at least in accordance with the BHP Group Parental Leave Australia Policy, as amended from time to time.</p> <p>14.2 The entitlements under clause 14.1 will not be less than:</p> <p>(a) the NES;</p> <p>(b) for the term of this Agreement, the entitlements in the Policy as at commencement of the Agreement.</p>	Parental leave is provided for in the NES.	<p><b>26. Parental leave and related entitlements</b></p> <p>Parental leave and related entitlements are provided for in the NES.</p> <p>NOTE: Disputes about requests for extensions to unpaid parental leave may be dealt with under clause 30—Dispute resolution and/or under section 76B of the Act.</p>	<p><b>More beneficial than the Award and NES</b></p> <p>Employees are entitled to parental leave entitlements in accordance with the BHP Group Parental Leave Australia Policy which currently provides for paid parental leave unlike the NES which only provides for unpaid parental leave.</p> <p>The BHP Group Parental Leave Policy currently contains entitlements which are more beneficial than</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	14.3 Paid parental leave is paid at an Employee's Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4). Night Shift Allowance is payable on paid parental leave, in accordance with clause 7.10 (if eligible), if an employee was being paid night shift allowance immediately prior to commencing parental leave, including where an employee is transferred to a safe job or to 'no safe job' leave prior to commencing parental leave.			<p>the Award and NES including:</p> <ul style="list-style-type: none"><li>the BHP Group Parental Leave Policy provides for 18 weeks' paid parental leave, in addition to unpaid parental leave equivalent to the NES;</li><li>paid parental leave may be paid at 'full pay' rate over 18 weeks or at 'half pay' over 36 weeks;</li><li>employees become eligible for paid and unpaid parental leave after only 3 months' service. The NES requires an employee to have 12 months' continuous service in order to be eligible for unpaid parental leave;</li><li>paid parental leave may be taken in two separate periods;</li><li>where both caregivers are employees of BHP, both employees are entitled to 18 weeks' paid parental leave, provided they are the primary carer at the time that the leave is taken; and</li><li>superannuation is paid during periods of unpaid parental leave, up to a maximum of 2 years' unpaid parental leave.</li></ul> <p>Since the BHP Group Parental Leave Australia Policy can be amended from time-to-time, clause 14.2(b) of the Proposed Agreement confirms that, for the term of the Proposed Agreement, employees are entitled to the entitlements set out in the Policy as they existed at the time of commencement of the Proposed Agreement.</p> <p>The Proposed Agreement also confirms that paid parental leave is paid at the employee's Minimum Annual Salary Rate (or contractual annual salary if higher) and night shift allowance is also payable on paid parental leave (if eligible) and in circumstances where the employee was being paid night shift allowance immediately prior to commencing parental leave, including where an employee is transferred to a safe job, or to 'no safe job' leave prior to commencing parental leave.</p> <p>Clause 14.2(a) of the Proposed Agreement, in conjunction with clause 3.3 of the Proposed Agreement also confirm that, to the extent of any inconsistency between the Policy and the NES, the employee will receive the more beneficial entitlement whether that is under the Policy or the NES.</p>
15 LONG SERVICE LEAVE	<p>15.1 Long service leave is in accordance with applicable legislation.</p> <p>15.2 Long service leave accrues and must be taken subject to relevant legislation and the Company policies, as amended from time to time.</p> <p>15.3 Long service leave is paid at an Employee's Minimum Annual Salary rate (or contractual annual salary if higher, in</p>	N/A	N/A	<p><b>Substantially the same as the Award and NES for all employees except site based employees (residential or FIFO) working in WAIO</b></p> <p>Under the Proposed Agreement, employees are entitled to long service leave in accordance with applicable legislation and Company policies. This is the same as applies under the Award and NES.</p>

Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	accordance with clause 7.4) in accordance with their normal pay periods. Night Shift Allowance is payable on long service leave in accordance with clause 7.10.			Company policies currently confirm long service leave entitlements in accordance with applicable legislation with the exception of site based employees (residential or FIFO) working in WAIO (who are not covered by the Black Coal Mining Industry Award 2020).
16 COMMUNITY SERVICE LEAVE	<p>16.1 Subject to clause 16.2, community service leave entitlements are provided for in accordance with the BHP Group Public Service Leave - Australia Policy, as amended from time to time.</p> <p>16.2 The entitlements under clause 16.1 will not be less than:</p> <p>(a) the NES;</p> <p>(b) for the term of this Agreement, the entitlements in the Policy as at the commencement of this Agreement.</p> <p>16.3 Paid community service leave is paid at an Employee's Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4). Night Shift Allowance is payable on paid community service leave, in accordance with clause 7.10 (if eligible).</p>	<p><b>Section 108 - Entitlement to be absent from employment for engaging in eligible community service activity</b></p> <p>An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if:</p> <p>(a) the period consists of one or more of the following:</p> <p>(i) time when the employee engages in the activity;</p> <p>(ii) reasonable travelling time associated with the activity;</p> <p>(iii) reasonable rest time immediately following the activity; and</p> <p>(b) unless the activity is jury service—the employee's absence is reasonable in all the circumstances.</p> <p><b>Section 109 - Meaning of eligible community service activity</b></p> <p>General</p> <p>(1) Each of the following is an eligible community service activity:</p> <p>(a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or</p> <p>(b) a voluntary emergency management activity (see subsection (2)); or</p> <p>(c) an activity prescribed in regulations made for the purpose of subsection (4).</p> <p>Voluntary emergency management activities</p> <p>(2) An employee engages in a voluntary emergency management activity if, and only if:</p> <p>(a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and</p> <p>(b) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and</p> <p>(c) the employee is a member of, or</p>	<p><b>27. Community service leave</b></p> <p>Community service leave is provided for in the NES.</p>	<p><b>More beneficial than Award and NES</b></p> <p>The Proposed Agreement and the Award both confirm that the NES provides for the minimum community service leave entitlements for employees.</p> <p>Employees are entitled to community service leave entitlements in accordance with the BHP Group Public Service Leave – Australia Policy.</p> <p>The BHP Group Public Service Leave - Australia Policy currently contains entitlements which are more beneficial than the Award and NES including:</p> <ul style="list-style-type: none"><li>Community service leave<ul style="list-style-type: none"><li>For employees who are engaged at coal assets:<ul style="list-style-type: none"><li>Employees on community service leave will be paid at their normal salary, less any fees paid for performing the community service activity;</li></ul></li><li>For employees who are engaged at WAIO assets:<ul style="list-style-type: none"><li>reasonable paid leave will be provided for an employee to attend to State Emergency Service call-outs, blood donation, volunteer fire fighting or other community services;</li><li>an employee who is elected to local government will be granted a maximum of 5 days' paid leave per financial year to attend to relevant activities.</li></ul></li><li>For employees engaged at Copper assets, employees who perform certain Fire Fighting and Search &amp; Rescue activities may be granted paid leave, at the Company's discretion.</li></ul></li><li>Defence Service Leave<ul style="list-style-type: none"><li>An employee will be granted up to 10 days' paid leave (with make-up pay) for Defence Force obligations in any financial year, subject to meeting evidence requirements.</li><li>An employee who joins the General Reserves of the ADF will also be paid for the initial 6 weeks of training on commencement as a member and additional 6 weeks of</li></ul></li></ul>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>has a member-like association with, a recognised emergency management body; and</p> <p>(d) either:</p> <p>(i) the employee was requested by or on behalf of the body to engage in the activity; or</p> <p>(ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.</p> <p>(3) A recognised emergency management body is:</p> <p>(a) a body, or part of a body, that has a role or function under a plan that:</p> <p>(i) is for coping with emergencies and/or disasters; and</p> <p>(ii) is prepared by the Commonwealth, a State or a Territory; or</p> <p>(b) a fire-fighting, civil defence or rescue body, or part of such a body; or</p> <p>(c) any other body, or part of a body, a substantial purpose of which involves:</p> <p>(i) securing the safety of persons or animals in an emergency or natural disaster; or</p> <p>(ii) protecting property in an emergency or natural disaster; or</p> <p>(iii) otherwise responding to an emergency or natural disaster; or</p> <p>(d) a body, or part of a body, prescribed by the regulations;</p> <p>but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this Division.</p> <p>Regulations may prescribe other activities</p> <p>(4) The regulations may prescribe an activity that is of a community service nature as an eligible community service activity.</p> <p><b>Section 110 - Notice and evidence requirements</b></p> <p>Notice</p> <p>(1) An employee who wants an absence from his or her employment to be covered by this Division must give his or her employer notice of the absence.</p>		<p>training over the subsequent 18 months.</p> <ul style="list-style-type: none"><li>An employee in the Coal assets will be granted defence force reserve leave of up to 16 consecutive days each year to meet annual training requirements. This leave is extended to a maximum of 28 consecutive days where the employee is required to join a Special Conditions Unit.</li><li>Jury Service Leave<ul style="list-style-type: none"><li>An employee will receive paid leave for up to 10 days of jury service leave, subject to evidence requirements.</li></ul></li></ul> <p>Since the BHP Group Public Service Leave – Australia Policy can be amended from time-to-time, clause 16.2(b) of the Proposed Agreement confirms that, for the term of the Proposed Agreement, employees are entitled to the entitlements set out in the Policy as they existed at the time of commencement of the Proposed Agreement.</p> <p>The Proposed Agreement also confirms that paid community service leave is paid at the employee's Minimum Annual Salary Rate (or contractual annual salary if higher) and night shift allowance is also payable on paid parental leave (if eligible).</p> <p>Clause 16.2(a) of the Proposed Agreement, in conjunction with clause 3.3 of the Proposed Agreement also confirm that, to the extent of any inconsistency between the Policy and the NES, the employee will receive the more beneficial entitlement whether that is under the Policy or the NES.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>(2) The notice:</p> <p>(a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and</p> <p>(b) must advise the employer of the period, or expected period, of the absence.</p> <p>Evidence</p> <p>(3) An employee who has given his or her employer notice of an absence under subsection (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.</p> <p>Compliance</p> <p>(4) An employee's absence from his or her employment is not covered by this Division unless the employee complies with this section.</p> <p>Note: Personal information given to an employer under this section may be regulated under the Privacy Act 1988.</p> <p><b>Section 111 - Payment to employees (other than casuals) on jury service</b></p> <p>Application of this section</p> <p>(1) This section applies if:</p> <p>(a) in accordance with this Division, an employee is absent from his or her employment for a period because of jury service; and</p> <p>(b) the employee is not a casual employee.</p> <p>Employee to be paid base rate of pay</p> <p>(2) Subject to subsections (3), (4) and (5), the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.</p> <p>Evidence</p> <p>(3) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:</p> <p>(a) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and</p> <p>(b) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.</p>		





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>Note: Personal information given to an employer under this subsection may be regulated under the Privacy Act 1988.</p> <p>(4) If, in accordance with subsection (3), the employer requires the employee to give the employer the evidence referred to in that subsection:</p> <p>(a) the employee is not entitled to payment under subsection (2) unless the employee provides the evidence; and</p> <p>(b) if the employee provides the evidence—the amount payable to the employee under subsection (2) is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.</p> <p>Payment only required for first 10 days of absence</p> <p>(5) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:</p> <p>(a) the employer is only required to pay the employee for the first 10 days of absence; and</p> <p>(b) the evidence provided in response to a requirement under subsection (3) need only relate to the first 10 days of absence; and</p> <p>(c) the reference in subsection (4) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.</p> <p>Meaning of jury service pay</p> <p>(6) Jury service pay means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.</p> <p>Meaning of jury service summons</p> <p>(7) Jury service summons means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.</p> <p><b>Section 112 - State and Territory laws that are not excluded</b></p> <p>(1) This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to engaging in eligible community service activities, to the extent that those entitlements are more beneficial to employees than the</p>		



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		entitlements under this Division.  Note: For example, this Act would not apply to the exclusion of a State or Territory law providing for a casual employee to be paid jury service pay.  If the community service activity is an activity prescribed in regulations made for the purpose of subsection 109(4), subsection (1) of this section has effect subject to any provision to the contrary in the regulations.		
17 LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE	17.1 Subject to clause 17.2, paid family and domestic violence leave is provided for in the BHP Group Family and Domestic Violence Support Policy, as amended from time to time.  17.2 The entitlements under clause 17.1 will not be less than: (a) the NES; (b) for the term of this Agreement, the entitlements in the Policy as at the commencement of this Agreement.  17.3 Paid family and domestic violence leave is paid at an Employee's Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4). Night Shift Allowance is payable on paid family and domestic violence leave, in accordance with clause 7.10 (if eligible).	<b>Section 106A - Entitlement to paid family and domestic violence leave</b>  (1) An employee is entitled to 10 days of paid family and domestic violence leave in a 12 month period. (2) Paid family and domestic violence leave: (a) is available in full at the start of each 12 month period of the employee's employment; and (b) does not accumulate from year to year; and (c) is available in full to part-time and casual employees. (3) For the purposes of subsection (2), if an employee is employed by a particular employer: (a) as a casual employee; or (b) for a specified period of time, for a specified task or for the duration of a specified season; the start of the employee's employment is taken to be the start of the employee's first employment with that employer. (4) The employee may take paid family and domestic violence leave as: (a) a single continuous 10 day period; or (b) separate periods of one or more days each; or (c) any separate periods to which the employee and the employer agree, including periods of less than one day. (5) To avoid doubt, this section does not prevent the employee and the employer agreeing that the employee may take paid or unpaid leave in addition to the entitlement in subsection (1) to deal with the impact of family and domestic violence.  <b>Section 106B - Taking paid family and</b>	<b>28. Family and domestic violence leave</b>  Family and domestic violence leave is provided for in the NES.  NOTE 1: Information provided to employers concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers are subject to confidentiality requirements regarding the handling of this information under section 106C of the Act and requirements as to what can be reported on payslips pursuant to regulations 3.47 and 3.48 of the Fair Work Regulations 2009.  NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.	<b>More beneficial than Award and NES</b>  The Proposed Agreement and the Award both confirm that the NES provides for the minimum family and domestic violence leave entitlements for employees.  Employees are entitled to family and domestic violence leave entitlements in accordance with the BHP Group Family and Domestic Violence Support Leave – Australia Policy.  The BHP Group Family and Domestic Violence Support Leave - Australia Policy currently contains entitlements which are more beneficial than the Award and NES including: <ul style="list-style-type: none"><li>An emergency financial support payment of up to US\$2,500 to employees who are experiencing family and domestic violence and need urgent and immediate assistance.</li><li>Up to 10 days' paid leave for employees who discloses use of violence or abuse and requests leave to seek help to change their abusive behaviour and/or improve the safety of their family. This paid leave will only be made available for formal counselling sessions and/or behavioural improvement programs.</li><li>Up to 10 days' paid leave for employees supporting a colleague or family member who is experiencing family and domestic violence.</li></ul> Since the BHP Group Family and Domestic Violence Support Leave – Australia Policy can be amended from time-to-time, clause 17.2(b) of the Proposed Agreement confirms that, for the term of the Proposed Agreement, employees are entitled to the entitlements set out in the Policy as they existed at the time of commencement of the Proposed Agreement.  The Proposed Agreement also confirms that paid family and domestic violence leave is paid at the employee's Minimum Annual Salary Rate (or contractual annual salary if higher) and night shift allowance is also payable on paid parental leave (if eligible).



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p><b>domestic violence leave</b></p> <p>(1) The employee may take paid family and domestic violence leave if:</p> <p>(a) the employee is experiencing family and domestic violence; and</p> <p>(b) the employee needs to do something to deal with the impact of the family and domestic violence; and</p> <p>(c) it is impractical for the employee to do that thing outside the employee's work hours.</p> <p>Note 1: Examples of actions, by an employee who is experiencing family and domestic violence, that could be covered by paragraph (b) include arranging for the safety of the employee or a close relative (including relocation), attending court hearings, accessing police services, attending counselling and attending appointments with medical, financial or legal professionals.</p> <p>Note 2: The notice and evidence requirements of section 107 must be complied with.</p> <p>(2) Family and domestic violence is violent, threatening or other abusive behaviour by a close relative of a person, a member of a person's household, or a current or former intimate partner of a person, that:</p> <p>(a) seeks to coerce or control the person; and</p> <p>(b) causes the person harm or to be fearful.</p> <p>(3) A close relative of a person is another person who:</p> <p>(a) is a member of the first person's immediate family; or</p> <p>(b) is related to the first person according to Aboriginal or Torres Strait Islander kinship rules.</p> <p>Note: Immediate family is defined in section 12.</p> <p><b>Section 106BA - Payment for paid family and domestic violence leave</b></p> <p>(1) If, in accordance with this Subdivision, an employee takes a period of paid family and domestic violence leave, the employer must pay the employee, in relation to the period:</p> <p>(a) for an employee other than a casual employee—at the employee's full rate</p>		<p>Clause 17.2(a) of the Proposed Agreement, in conjunction with clause 3.3 of the Proposed Agreement also confirm that, to the extent of any inconsistency between the Policy and the NES, the employee will receive the more beneficial entitlement whether that is under the Policy or the NES.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>of pay, worked out as if the employee had not taken the period of leave; or</p> <p>(b) for a casual employee—at the employee's full rate of pay, worked out as if the employee had worked the hours in the period for which the employee was rostered.</p> <p>(2) Without limiting paragraph (1)(b), an employee is taken to have been rostered to work hours in a period if the employee has accepted an offer by the employer of work for those hours.</p> <p>Paragraph (1)(b) does not prevent a casual employee from taking a period of paid family and domestic violence leave that does not include hours for which the employee is rostered to work. However, the employer is not required to pay the employee in relation to such a period.</p>		
18 LEAVE WITHOUT PAY	18.1 An Employee who has exhausted all leave entitlements may make a written application for leave without pay stating the reasons, and the proposed commencement and completion dates. Leave without pay, and its duration, may be granted at the Company's sole discretion. Leave without pay under this clause does not count as service.		N/A	<p><b>Substantially the same as Award</b></p> <p>The Proposed Agreement confirms that employees can make an application for leave without pay if the employee has exhausted all leave entitlements.</p> <p>Since employers who are covered by an Award can provide leave without pay at their discretion, the provisions of the Proposed Agreement are substantially the same as the Award.</p>
19 INCLEMENT WEATHER	19.1 Arrangements in the event of severe wet weather or a cyclone are dealt with in the relevant Asset or site policy, as amended from time to time.		N/A	<p><b>Not conferred by Award</b></p> <p>The Proposed Agreement confirms that arrangements relating to inclement weather are dealt with in accordance with a site/asset policies and employees can utilise annual leave if they are unable to get to work due to inclement weather.</p> <p>There is no equivalent provision in the Award.</p>
20 ACCOMMODATION AND TRAVEL	20.1 For the term of this Agreement, the following arrangements will apply.		N/A	<p><b>More beneficial than Award</b></p> <p>The Proposed Agreement sets out the accommodation and travel benefits provided to employees who are either commute employees or non-local employees. The Proposed Agreement also provides for additional benefits for employees who are local employees in lieu of the accommodation and travel benefits.</p> <p>The Award does not contain an equivalent provision.</p>
	20.2 In this clause:			
	(a) <b>Local Area</b> means the area within a radius of the site at which an Employee is working from which it is reasonably practical to drive from the Employee's residence in and out of that site for each shift in accordance with any fatigue management plan requirements for the site;			
	(b) <b>Local Employee</b> means any Employee who resides within the Local Area;			
	(c) <b>Commute Employee</b> is an Employee who lives outside a radius of the site at which they are working and from which it is not reasonably practical to drive from the Employee's residence in and out of that site for each shift, but from which it is reasonably practical to drive in and out of that site for each swing in accordance with any journey management plan			



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>requirements for the site;</p> <p>(d) <b>Non-Local Employee</b> means any other Employee that is not a Local Employee or Commute Employee.</p> <p>20.3 Employment in a hub</p> <p>Employees are employed to work at deployments within a hub as directed by the Company from time to time. As a result, Employees are not employed to work in a single location or site and are able to choose where to reside.</p> <p>20.4 Local Employees Benefits</p> <p>(a) Subject to this clause 20.4, Local Employees will travel to and from the site in their own time and at their own expense each day that they are required to perform work.</p> <p>(b) Local Employees will be paid a local allowance of \$8,000 per year paid in equal fortnightly instalments included in their regular pay, for each fortnight work, including non-rostered overtime, is performed as required or an Employee is on paid leave.</p> <p>(c) Where the Company, requires Local Employees to travel daily to and from the site from a designated location and by a designated means, such transport will be at the Company's cost, and will not affect payment of the allowance in clause 20.4(b).</p> <p>(d) This clause does not apply if an Employee accepts, or otherwise has the benefit of, other housing and/or accommodation arrangements with the Company.</p> <p>20.5 Commute Employees Benefits</p> <p>(a) Subject to clause 20.7, the Company will provide Commute Employees at the Company's cost, with single person's village or other accommodation during the rostered swing of work. The type and location of the accommodation is at the Company's discretion, and if an Employee chooses not to stay in the accommodation provided the Employee will be responsible for their own accommodation at their own expense.</p> <p>(b) The Company will provide Commute Employees at its cost with:</p> <p>(i) road transport to and from the site from the accommodation each day that they perform work as directed;</p> <p>(ii) a travel allowance of \$5,000 per year paid in equal fortnightly instalments included in their regular pay, for all incidental costs incurred in travelling to and from their residence to their accommodation to perform work, including non-rostered overtime, as required. This allowance will be included in regular pay for each fortnight work is performed as required or an Employee is on paid leave.</p> <p>(c) Where the Company requires Commute Employees to commute to and from the accommodation by a designated means, such transport will be at the Company's cost and will not affect payment of the allowance in clause 20.5(b).</p>			



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>20.6 Non-Local Employees Benefits</p> <p>(a) Subject to clause 20.7 the Company at its cost, will provide Non-Local Employees with:</p> <p>(i) single person's village or other accommodation during the rostered swing of work. The type and location of the accommodation is at the Company's discretion. If an Employee chooses not to stay in the accommodation provided, the Employee will be responsible for their own accommodation at their own expense;</p> <p>(ii) air transport between:</p> <p>(A) the transport departure points in (C) to (E) below; or</p> <p>(B) any other departure point(s) nominated by the Company from time to time,</p> <p>and the nominated provincial airport and return, to meet the Employee's roster.</p> <p>At the commencement of this Agreement the transport departure points are:</p> <p>(C) for the Queensland Hub – Brisbane, Cairns and Townsville;</p> <p>(D) for the Western Australia Hub – Perth and Busselton;</p> <p>(E) for the South Australia Hub – Adelaide;</p> <p>(iii) road transport to and from the site from the accommodation each day that they perform work; and</p> <p>(iv) road transport between the provincial airport nominated by the Company and the single person's village or other accommodation and return.</p> <p>(b) The Company can require Employees to travel under this sub-clause by a designated means, timetables, and carriers.</p> <p>20.7 Conditions of travel and accommodation</p> <p>(a) Only one of subclauses 20.4, 20.5, or 20.6 will apply. An Employee must provide a written request to their Supervisor at least 28 days prior to any change in status under those clauses.</p> <p>(b) The benefits apply for:</p> <p>(i) each week the Employee works in accordance with the directions of the Company or is on paid leave; and</p> <p>(ii) the term of this Agreement.</p> <p>(c) The allowances applicable under this clause:</p> <p>(i) are divisible flat payments and do not compound for overtime or any penalty;</p> <p>(ii) apply pro rata for Part Time Employees in accordance with clause 5.3.</p> <p>(d) All travel and rest time under this clause is non-working time.</p>			





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>(e) Employees who choose to use the accommodation or travel provided will, as a condition of employment, abide by the rules and regulations of the Company and/or the operator, as amended from time to time. Disruptive behaviour and/or breaching rules and regulations can invoke removal of accommodation and/or travel rights. An Employee who has their rights withdrawn and does not provide their own accommodation and/or travel in accordance with their roster, may have their employment terminated.</p> <p>(f) Employees must comply with the journey management plan requirements of any site.</p> <p>(g) Without limiting sub-clauses 20.7(d) and (f), to assist with management of fatigue, Non-Local and Commute Employees travelling to or from the Local Area to perform work may be required by the Company to:</p> <p>(i) travel on the day preceding the first shift and rest at designated Company provided accommodation, prior to commencing the first shift; and</p> <p>(ii) on completion of work on any roster, travel may include rest at designated Company provided accommodation during the period following the completion of the final shift before commencing commute travel.</p> <p>(h) Where any transport is provided by the Company, an Employee must travel on the scheduled transport that is allocated to the Employee. In circumstances where an Employee, for any reason other than a direction by the Company, does not travel at the allocated time:</p> <p>(i) it will be the Employee's responsibility to provide an alternate means of transport at the Employee's cost and subject to journey management and fatigue management requirements; or</p> <p>(ii) where that is not possible, it may result in the Employee being ineligible to work that rostered shift and no payment will be provided for that shift.</p> <p>20.8 If a FIFO employee is at work and takes personal leave for the remainder of their rostered swing, the employee can access the first available seat on a charter flight to return home. Where a seat on a charter flight is not available, the Resource &amp; Logistics team will source the next available commercial flight subject to General Manager approval.</p>			
21 STAND ASIDE AND STAND DOWN	<p>21.1 Subject to clause 21.3, the Company can stand aside an Employee:</p> <p>(a) with or without pay for full or partial refusal of duty; or</p> <p>(b) with or without pay for neglect of duty; or</p> <p>(c) with or without pay for misconduct, while it is being investigated.</p> <p>21.2 If the Company stands aside an Employee without pay for neglect of duty or misconduct and the Company determines after an investigation that the Employee did not neglect their</p>		N/A	<p><b>Different to Award</b></p> <p>The Proposed Agreement confirms the ability for the Company to stand aside an employee (with or without pay) in certain circumstances.</p> <p>The Award does not contain an equivalent provision.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>duty or did not engage in any misconduct (as the case may be), the Company will pay the Employee the full amount of remuneration they would have received in respect of the period for which they were stood aside.</p> <p>21.3 Subject to the NES:</p> <p>(a) An Employee stood aside under clause 21.1(c) is entitled to be paid their Minimum Annual Salary (or contractual annual salary if higher, in accordance with clause 7.4). for the period they are stood aside, provided the Employee:</p> <p>(i) remains ready, willing and able to perform work; and</p> <p>(ii) complies with all lawful and reasonable directions given by the Company during this period (including, for example, any direction to participate in the investigation into alleged misconduct).</p> <p>(b) If an Employee stood aside with pay under this clause fails to meet the requirements of sub-clause 21.3(a), the Employee is not entitled to be paid their Minimum Annual Salary (or contractual annual salary if higher, in accordance with clause 7.4).for the period that the Employee does not meet those requirements.</p> <p>(c) Night Shift Allowance is payable on stand aside with pay in accordance with clause 7.10 (if eligible).</p>			
	<p>21.4 The Company may stand down an Employee without pay during a period in which the Employee cannot usefully be employed because of one of the following circumstances:</p> <p>(a) industrial action;</p> <p>(b) a breakdown of machinery or equipment if the Company cannot reasonably be held responsible for the break down; or</p> <p>(c) an interruption to work for any cause for which the Company cannot reasonably be held responsible.</p> <p>21.5 Employees who have been stood down under the circumstances described in clause 21.4 above may request to take accrued annual or long service leave entitlements. Approval is at the Company's discretion.</p> <p>21.6 Any Employee stood down under clause 21.4 will continue to have their service recognised for the purposes of "continuous service".</p> <p>21.7 if an employee is stood down under this clause during their rostered swing, the Company will assist the employee to return home as soon as practicable once they are no longer required by the company.</p>		N/A	<p><b>Substantially the same as Award</b></p> <p>The Proposed Agreement confirms the circumstances where the Company may stand down an employee if they cannot be usefully employed.</p> <p>The provisions of the Proposed Agreement are consistent with the stand down provisions in section 524 of the Fair Work Act 2009 (Cth).</p> <p>Since the stand down provisions in section 524 of the FW Act also apply to employees covered by the Award, the Proposed Agreement is substantially the same as the Award.</p>
22 ISSUE RESOLUTION PROCEDURE	<p>22.1 This clause sets out the process for resolving issues which relate to:</p> <p>(a) a matter arising under this Agreement; or</p> <p>(b) the NES.</p> <p>22.2 Where an issue under clause 22.1 arises which an Employee seeks to be resolved, the issue must first be</p>		<p>32. Dispute resolution</p> <p>32.1 Clause 32 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES .</p> <p>32.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.</p>	<p><b>Different to Award</b></p> <p>The issue resolution procedures in the Proposed Agreement are substantially the same as the dispute resolution procedure in the Award, including that a dispute can only be arbitrated by the Fair Work Commission with the consent of both parties, with the exception that:</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term								
	<p>referred for discussion between the Employee and their immediate Supervisor to attempt to resolve the issue.</p> <p>22.3 If the issue remains unresolved, it may be referred for discussion between the Employee and the Employee's Superintendent.</p> <p>22.4 If the issue is still not resolved, it may be referred for discussion between the Employee and the Employee's Departmental Manager.</p> <p>22.5 Discussions in accordance with clauses 22.2, 22.3 and 22.4 will be held as soon as reasonably practicable.</p> <p>22.6 By agreement, the Company and the Employee may bypass any of the steps in clauses 22.3 or 22.4 in the interests of speedy resolution of the issue.</p> <p>22.7 If the issue resolution processes in clauses 22.2, 22.3 and 22.4 have genuinely been exhausted (with the exception of the processes in clauses 22.3 or 22.4 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.</p> <p>22.8 Either the Employee or the Company may have a representative to assist at any stage of this process.</p>		<p>32.3 If the dispute is not resolved through discussion as mentioned in clause 32.2 , the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.</p> <p>32.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 32.2 and 32.3 , a party to the dispute may refer it to the Fair Work Commission.</p> <p>32.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.</p> <p>32.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.</p> <p>32.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 32 .</p> <p>32.8 While procedures are being followed under clause 32 in relation to a dispute:</p> <p>(a) work must continue in accordance with this award and the Act ; and</p> <p>(b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.</p> <p>32.9 Clause 32.8 is subject to any applicable work health and safety legislation.</p> <p>NOTE: In addition to clause 32 , the Act contains dispute resolution procedures as follows:</p> <table><tr><td>For a dispute about rights under the Act to</td><td>Section</td></tr><tr><td>Request flexible working arrangements</td><td>65B</td></tr><tr><td>Change casual employment status</td><td>66M</td></tr><tr><td>Request an extension to unpaid parental leave</td><td>76B</td></tr></table>	For a dispute about rights under the Act to	Section	Request flexible working arrangements	65B	Change casual employment status	66M	Request an extension to unpaid parental leave	76B	<ul style="list-style-type: none"><li>the Proposed Agreement allows the Company and the employee to bypass some of the steps by Agreement (related to escalation to the Superintendent and Department Manager as a precondition to FWC involvement);</li><li>the Proposed Agreement does not contain any obligations regarding how work must be conducted during a dispute.</li></ul>
For a dispute about rights under the Act to	Section											
Request flexible working arrangements	65B											
Change casual employment status	66M											
Request an extension to unpaid parental leave	76B											



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term				Explanation of the Effect of Proposed Agreement Term
				Exercise an employee's right to disconnect			
23 INDIVIDUAL FLEXIBILITY	<p>23.1 The Company and any Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:</p> <p>(a) the arrangement deals with 1 or more of the following matters:</p> <p>(i) arrangements about when work is performed;</p> <p>(ii) overtime rates;</p> <p>(iii) penalty rates;</p> <p>(iv) allowances;</p> <p>(v) leave loading; and</p> <p>(b) the arrangement meets the genuine needs of the Company and Employee in relation to 1 or more of the matters mentioned in paragraph(a); and</p> <p>(c) the arrangement is genuinely agreed to by the Company and Employee.</p> <p>23.2 The Company must ensure that the terms of the individual flexibility arrangement:</p> <p>(a) are about permitted matters under section 172 of the FW Act; and</p> <p>(b) are not unlawful terms under section 194 of the FW Act; and</p> <p>(c) result in the Employee being better off overall than the Employee would be if no arrangement was made.</p> <p>23.3 The Company must ensure that the terms of the individual flexibility arrangement:</p> <p>(a) is in writing;</p> <p>(b) includes the name of the Company and Employee; and</p> <p>(c) is signed by the Company and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and</p> <p>(d) includes details of:</p> <p>(i) the terms of this Agreement that will be varied by the arrangement; and</p> <p>(ii) how the arrangement will vary the effect of the terms; and</p> <p>(iii) how the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and</p> <p>(e) states the day on which the arrangement commences.</p>		<p><b>5. Individual flexibility arrangements</b></p> <p>5.1 Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:</p> <p>(a) arrangements for when work is performed; or</p> <p>(b) overtime rates; or</p> <p>(c) penalty rates; or</p> <p>(d) allowances; or</p> <p>(e) annual leave loading.</p> <p>5.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.</p> <p>5.3 An agreement may only be made after the individual employee has commenced employment with the employer.</p> <p>5.4 An employer who wishes to initiate the making of an agreement must:</p> <p>(a) give the employee a written proposal; and</p> <p>(b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.</p> <p>5.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.</p> <p>5.6 An agreement must do all of the following:</p> <p>(a) state the names of the employer and the employee; and</p> <p>(b) identify the award term, or award terms, the application of which is to be varied; and</p> <p>(c) set out how the application of the award term, or each award term, is varied; and</p> <p>(d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and</p> <p>(e) state the date the agreement is to start.</p> <p>5.7 An agreement must be:</p> <p>(a) in writing; and</p> <p>(b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.</p> <p>5.8 Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.</p> <p>5.9 The employer must keep the agreement as a time and wages record and</p>				<p><b>Different to Award</b></p> <p>The Proposed Agreement and the Award are substantially the same in relation to individual flexibility arrangements with the exception that, under the Proposed Agreement, an individual flexibility arrangement can be terminated by either party with 28 days' notice as compared to the Award which provides for 13 weeks' notice.</p>

Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>23.4 The Company must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.</p> <p>23.5 The Company or Employee may terminate the individual flexibility arrangement:</p> <p>(a) by giving no more than 28 days written notice to the other party to the arrangement; or</p> <p>(b) if the Company and Employee agree in writing—at any time.</p>		<p>give a copy to the employee.</p> <p>5.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.</p> <p>5.11 An agreement may be terminated:</p> <p>(a) at any time, by written agreement between the employer and the employee; or</p> <p>(b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).</p> <p>NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the Act).</p> <p>5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.</p> <p>5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.</p> <p>6. Requests for flexible working arrangements</p> <p>Requests for flexible working arrangements are provided for in the NES.</p> <p>NOTE: Disputes about requests for flexible working arrangements may be dealt with under clause 32—Dispute resolution and/or under section 65B of the Act.</p>	
	N/A		<p><b>6. Requests for flexible working arrangements</b></p> <p>Requests for flexible working arrangements are provided for in the NES.</p> <p>NOTE: Disputes about requests for flexible working arrangements may be dealt with under clause 30—Dispute resolution and/or under section 65B of the Act.</p>	<p><b>Not conferred by Proposed Agreement</b></p> <p>While the Proposed Agreement does not contain any express right for employees to make flexible work requests, the effect of clause 3.3 of the Proposed Agreement means that employees are entitled to make flexible work requests in accordance with the provisions of the NES.</p>
<b>24 WORKPLACE DELEGATES' RIGHTS</b>	<p>24.1 This clause 24 provides for the exercise of the rights of workplace delegates set out in section 350C of the FW Act.</p> <p>24.2 In this clause 24:</p> <p>(a) workplace delegate means an Employee who is a workplace delegate within the meaning of section 350C(1) of the FW Act;</p> <p>(b) delegate's organisation means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and</p> <p>(c) eligible Employees means members and persons eligible to be members of the delegate's organisation who are employed by the Company in the enterprise.</p> <p>24.3 Before exercising entitlements under this clause, a workplace delegate must give the Company written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the Company with evidence that would satisfy a reasonable person of their</p>	<p><b>Section 65 - Requests for flexible working arrangements</b></p> <p>Employee may request change in working arrangements</p> <p>(1) If:</p> <p>(a) any of the circumstances referred to in subsection (1A) apply to an employee; and</p> <p>(b) the employee would like to change his or her working arrangements because of those circumstances;</p> <p>then the employee may request the employer for a change in working arrangements relating to those circumstances.</p> <p>Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and</p>	<p><b>29A. Workplace delegates' rights</b></p> <p>29A.1 Clause 29A provides for the exercise of the rights of workplace delegates set out in section 350C of the Act .</p> <p>NOTE: Under section 350C(4) of the Act , the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause 29A.</p> <p>29A .2 In clause 29A :</p> <p>(a) employer means the employer of the workplace delegate;</p> <p>(b) delegate's organisation means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and</p> <p>(c) eligible employees means members and persons eligible to be members of the delegate's organisation who are employed by the employer in the enterprise.</p> <p>29A.3 Before exercising entitlements under clause 29A, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their</p>	<p><b>Substantially the same as Award</b></p> <p>The workplace delegates rights term in the Proposed Agreement and the Award are substantially the same.</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>appointment or election.</p> <p>24.4 An Employee who ceases to be a workplace delegate must give written notice to the Company within 14 days.</p> <p>24.5 Right of representation</p> <p>(a) A workplace delegate may represent the industrial interests of eligible Employees who wish to be represented by the workplace delegate in matters including:</p> <p>(i) consultation about major workplace change;</p> <p>(ii) consultation about changes to rosters or hours of work;</p> <p>(iii) resolution of disputes;</p> <p>(iv) disciplinary processes;</p> <p>(v) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the FW Act or is assisting the delegate's organisation with enterprise bargaining; and</p> <p>(vi) any process or procedure within an award, enterprise agreement or policy of the Company under which eligible employees are entitled to be represented and which concerns their industrial interests.</p> <p>24.6 Entitlement to reasonable communication</p> <p>(a) A workplace delegate may communicate with eligible Employees for the purpose of representing their industrial interests under this clause. This includes discussing membership of the delegate's organisation and representation with eligible Employees.</p> <p>(b) A workplace delegate may communicate with eligible Employees during working hours or work breaks, or before or after work.</p> <p>24.7 Entitlement to reasonable access to the workplace and workplace facilities</p> <p>(a) The Company must provide a workplace delegate with access to or use of the following workplace facilities:</p> <p>(i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible Employees;</p> <p>(ii) a physical or electronic noticeboard;</p> <p>(iii) electronic means of communication ordinarily used in the workplace by the Company to communicate with eligible employees and by Eligible employees to communicate with each other, including access to Wi-Fi;</p> <p>(iv) a lockable filing cabinet or other secure document storage area; and</p> <p>(v) office facilities and equipment including printers, scanners and photocopiers.</p> <p>(b) The Company is not required to provide access to or use of a workplace facility under this clause if:</p>	<p>changes in location of work.</p> <p>(1A) The following are the circumstances:</p> <p>(aa) the employee is pregnant;</p> <p>(a) the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;</p> <p>(b) the employee is a carer (within the meaning of the Carer Recognition Act 2010);</p> <p>(c) the employee has a disability;</p> <p>(d) the employee is 55 or older;</p> <p>(e) the employee is experiencing family and domestic violence;</p> <p>(f) the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing family and domestic violence.</p> <p>(1B) To avoid doubt, and without limiting subsection (1), an employee who:</p> <p>(a) is a parent, or has responsibility for the care, of a child; and</p> <p>(b) is returning to work after taking leave in relation to the birth or adoption of the child;</p> <p>may request to work part-time to assist the employee to care for the child.</p> <p>(2) The employee is not entitled to make the request unless:</p> <p>(a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or</p> <p>(b) for a casual employee—the employee:</p> <p>(i) is, immediately before making the request, a regular casual employee of the employer who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months; and</p> <p>(ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.</p> <p>(2A) For the purposes of applying paragraph (2)(a) in relation to an employee who has had their employment changed under Division 4A of Part 2-2, any period for which the employee was a regular casual employee of the employer is taken to be continuous</p>	<p>appointment or election.</p> <p>29A.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.</p> <p>29A.5 Right of representation</p> <p>A workplace delegate may represent the industrial interests of eligible employees who wish to be represented by the workplace delegate in matters including:</p> <p>(a) consultation about major workplace change;</p> <p>(b) consultation about changes to rosters or hours of work;</p> <p>(c) resolution of disputes;</p> <p>(d) disciplinary processes;</p> <p>(e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the Act or is assisting the delegate's organisation with enterprise bargaining; and</p> <p>(f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible employees are entitled to be represented and which concerns their industrial interests.</p> <p>29A.6 Entitlement to reasonable communication</p> <p>(a) A workplace delegate may communicate with eligible employees for the purpose of representing their industrial interests under clause 29A.5. This includes discussing membership of the delegate's organisation and representation with eligible employees.</p> <p>(b) A workplace delegate may communicate with eligible employees during working hours or work breaks, or before or after work.</p> <p>29A.7 Entitlement to reasonable access to the workplace and workplace facilities</p> <p>(a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:</p> <p>(i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible employees;</p> <p>(ii) a physical or electronic noticeboard;</p> <p>(iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi;</p> <p>(iv) a lockable filing cabinet or other secure document storage area; and</p> <p>(v) office facilities and equipment including printers, scanners and photocopiers.</p> <p>(b) The employer is not required to provide access to or use of a workplace facility under clause 29A.7(a) if:</p> <p>(i) the workplace does not have the facility;</p> <p>(ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or</p> <p>(iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.</p> <p>29A.8 Entitlement to reasonable access to training</p> <p>Unless the employer is a small business employer, the employer must provide a</p>	



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>(i) the workplace does not have the facility;</p> <p>(ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or</p> <p>(iii) the Company does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.</p> <p>24.8 Entitlement to reasonable access to training</p> <p>(a) The Company must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible Employees, subject to the following conditions:</p> <p>(i) In each year commencing 1 July, the Company is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible Employees.</p> <p>(ii) The number of eligible Employees will be determined on the day a delegate requests paid time to attend training, as the number of eligible Employees who are full-time or part-time employees.</p> <p>(iii) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training. For the avoidance of double, this includes Night Shift Allowance in accordance with clause 7.10 (if eligible).</p> <p>(iv) The workplace delegate must give the Company not less than 5 weeks' notice (unless the Company and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.</p> <p>(v) If requested by the Company, the workplace delegate must provide the Company with an outline of the training content.</p> <p>(vi) The Company must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.</p> <p>(vii) The workplace delegate must, within 7 days after the day on which the training ends, provide the Company with evidence that would satisfy a reasonable person of their attendance at the training.</p> <p>24.9 Exercise of entitlements under clause 24</p> <p>(a) A workplace delegate's entitlements under this clause 24 are subject to the conditions that the workplace delegate must, when exercising those entitlements:</p>	<p>service for the purposes of that paragraph.</p> <p>Formal requirements</p> <p>(3) The request must:</p> <p>(a) be in writing; and</p> <p>(b) set out details of the change sought and of the reasons for the change.</p> <p>Agreeing to the request</p> <p><b>Section 65A - Responding to requests for flexible working arrangements</b></p> <p>Responding to the request</p> <p>(1) If, under subsection 65(1), an employee requests an employer for a change in working arrangements relating to circumstances that apply to the employee, the employer must give the employee a written response to the request within 21 days.</p> <p>(2) The response must:</p> <p>(a) state that the employer grants the request; or</p> <p>(b) if, following discussion between the employer and the employee, the employer and the employee agree to a change to the employee's working arrangements that differs from that set out in the request—set out the agreed change; or</p> <p>(c) subject to subsection (3)—state that the employer refuses the request and include the matters required by subsection (6).</p> <p>(3) The employer may refuse the request only if:</p> <p>(a) the employer has:</p> <p>(i) discussed the request with the employee; and</p> <p>(ii) genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the circumstances mentioned in subsection (1); and</p> <p>(b) the employer and the employee have not reached such an agreement; and</p> <p>(c) the employer has had regard to the consequences of the refusal for the employee; and</p> <p>(d) the refusal is on reasonable business grounds.</p> <p>Note: An employer's grounds for refusing a request may be taken to be reasonable</p>	<p>workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible employees, subject to the following conditions:</p> <p>(a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible employees.</p> <p>(b) The number of eligible employees will be determined on the day a delegate requests paid time to attend training, as the number of eligible employees who are:</p> <p>(i) full-time or part-time employees; or</p> <p>(ii) regular casual employees.</p> <p>(c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.</p> <p>(d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.</p> <p>(e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.</p> <p>(f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.</p> <p>(g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.</p> <p>29A.9 Exercise of entitlements under clause 29A</p> <p>(a) A workplace delegate's entitlements under clause 29A are subject to the conditions that the workplace delegate must, when exercising those entitlements:</p> <p>(i) comply with their duties and obligations as an employee;</p> <p>(ii) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;</p> <p>(iii) not hinder, obstruct or prevent the normal performance of work; and</p> <p>(iv) not hinder, obstruct or prevent eligible employees exercising their rights to freedom of association.</p> <p>(b) Clause 29A does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible employees.</p> <p>(c) Clause 29A does not require an eligible employee to be represented by a workplace delegate without the employee's agreement.</p> <p>NOTE: Under section 350A of the Act , the employer must not:</p> <p>(a) unreasonably fail or refuse to deal with a workplace delegate; or</p>	



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
	<p>(i) comply with their duties and obligations as an Employee;</p> <p>(ii) comply with the reasonable policies and procedures of the Company, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;</p> <p>(iii) not hinder, obstruct or prevent the normal performance of work; and</p> <p>(iv) not hinder, obstruct or prevent eligible Employees exercising their rights to freedom of association.</p> <p>(b) Clause 24 does not require the Company to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible Employees.</p> <p>(c) Clause 24 does not require an eligible Employee to be represented by a workplace delegate without the employee's agreement.</p>	<p>business grounds, or not to be reasonable business grounds, in certain circumstances: see subsection 65C(5).</p> <p>(4) To avoid doubt, subparagraph (3)(a)(ii) does not require the employer to agree to a change to the employee's working arrangements if the employer would have reasonable business grounds for refusing a request for the change.</p> <p>Reasonable business grounds for refusing requests</p> <p>(5) Without limiting what are reasonable business grounds for the purposes of paragraph (3)(d) and subsection (4), reasonable business grounds for refusing a request include the following:</p> <p>(a) that the new working arrangements requested would be too costly for the employer;</p> <p>(b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;</p> <p>(c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested;</p> <p>(d) that the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;</p> <p>(e) that the new working arrangements requested would be likely to have a significant negative impact on customer service.</p> <p>Note: The specific circumstances of the employer, including the nature and size of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request for the purposes of paragraph (3)(d) and subsection (4). For example, if the employer has only a small number of employees, there may be no capacity to change the working arrangements of other employees to accommodate the request (see paragraph (5)(b)).</p> <p>Employer must explain grounds for refusal</p> <p>(6) If the employer refuses the request, the written response under subsection (1) must:</p> <p>(a) include details of the reasons for the refusal; and</p> <p>(b) without limiting paragraph (a) of</p>	<p>(b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or</p> <p>(c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the Act or clause 29A.</p>	



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>this subsection:</p> <p>(i) set out the employer's particular business grounds for refusing the request; and</p> <p>(ii) explain how those grounds apply to the request; and</p> <p>(c) either:</p> <p>(i) set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the circumstances mentioned in subsection (1) and that the employer would be willing to make; or</p> <p>(ii) state that there are no such changes; and</p> <p>(d) set out the effect of sections 65B and 65C.</p> <p>Genuinely trying to reach an agreement</p> <p>(7) This section does not affect, and is not affected by, the meaning of the expression "genuinely trying to reach an agreement", or any variant of the expression, as used elsewhere in this Act.</p> <p><b>Section 65B - Disputes about the operation of this Division</b></p> <p>Application of this section</p> <p>(1) This section applies to a dispute between an employer and an employee about the operation of this Division if:</p> <p>(a) the dispute relates to a request by the employee to the employer under subsection 65(1) for a change in working arrangements relating to circumstances that apply to the employee; and</p> <p>(b) either:</p> <p>(i) the employer has refused the request; or</p> <p>(ii) 21 days have passed since the employee made the request, and the employer has not given the employee a written response to the request under section 65A.</p> <p>Note 1: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).</p> <p>Note 2: Subsection 55(4) permits inclusion of terms that are ancillary or incidental to, or that supplement, the National Employment Standards. However, a term of a modern award or an enterprise agreement has no</p>		



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>effect to the extent it contravenes section 55 (see section 56).</p> <p>Resolving disputes</p> <p>(2) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.</p> <p>FWC may deal with disputes</p> <p>(3) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.</p> <p>(4) If a dispute is referred under subsection (3):</p> <p>(a) the FWC must first deal with the dispute by means other than arbitration, unless there are exceptional circumstances; and</p> <p>(b) the FWC may deal with the dispute by arbitration in accordance with section 65C.</p> <p>Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate. The FWC commonly deals with disputes by conciliation. The FWC may also deal with the dispute by mediation, making a recommendation or expressing an opinion (see subsection 595(2)).</p> <p>Representatives</p> <p>(5) The employer or employee may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of:</p> <p>(a) resolving the dispute; or</p> <p>(b) the FWC dealing with the dispute.</p> <p>Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).</p> <p><b>Section 65C - Arbitration</b></p> <p>(1) For the purposes of paragraph 65B(4)(b), the FWC may deal with the dispute by arbitration by making any of the following orders:</p> <p>(a) if the employer has not given the employee a written response to the request under section 65A—an order that the employer be taken to have refused the request;</p> <p>(b) if the employer refused the</p>		



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>request:</p> <p>(i) an order that it would be appropriate for the grounds on which the employer refused the request to be taken to have been reasonable business grounds; or</p> <p>(ii) an order that it would be appropriate for the grounds on which the employer refused the request to be taken not to have been reasonable business grounds;</p> <p>(c) if the FWC is satisfied that the employer has not responded, or has not responded adequately, to the employee's request under section 65A—an order that the employer take such further steps as the FWC considers appropriate, having regard to the matters in section 65A;</p> <p>(d) subject to subsection (3) of this section:</p> <p>(i) an order that the employer grant the request; or</p> <p>(ii) an order that the employer make specified changes (other than the requested changes) in the employee's working arrangements to accommodate, to any extent, the circumstances mentioned in paragraph 65B(1)(a).</p> <p>Note: An order by the FWC under paragraph (e) could, for example, require the employer to give a response, or further response, to the employee's request, and could set out matters that must be included in the response or further response.</p> <p>(2) In making an order under subsection (1), the FWC must take into account fairness between the employer and the employee.</p> <p>(2A) The FWC must not make an order under paragraph (1)(e) or (f) that would be inconsistent with:</p> <p>(a) a provision of this Act; or</p> <p>(b) a term of a fair work instrument (other than an order made under that paragraph) that, immediately before the order is made, applies to the employer and employee.</p> <p>(3) The FWC may make an order under paragraph (1)(f) only if the FWC is satisfied that there is no reasonable prospect of the dispute being resolved without the making of such an order.</p> <p>(4) If the FWC makes an order under paragraph (1)(a), the employer is taken to have refused the request.</p>		



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
		<p>(5) If the FWC makes an order under paragraph (1)(b), the grounds on which the employer refuses the request are taken:</p> <p>(a) for an order made under subparagraph (1)(b)(i)—to be reasonable business grounds; or</p> <p>(b) for an order made under subparagraph (1)(b)(ii)—not to be reasonable business grounds.</p> <p>Contravening an order under subsection (1)</p> <p>(6) A person must not contravene a term of an order made under subsection (1).</p> <p>Note: This subsection is a civil remedy provision (see Part 4-1).</p> <p><b>Section 66 - State and Territory laws that are not excluded</b></p> <p>This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to flexible working arrangements, to the extent that those entitlements are more beneficial to employees than the entitlements under this Division.</p>		
<b>25 MANAGEMENT OF CHANGE / CONSULTATION</b>	25.1 The model consultation term prescribed in accordance with s 205(3) of the FW Act applies, as amended from time to time.		<p><b>30. Consultation about major workplace change</b></p> <p>30.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:</p> <p>(a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and</p> <p>(b) discuss with affected employees and their representatives (if any):</p> <p>(i) the introduction of the changes; and</p> <p>(ii) their likely effect on employees; and</p> <p>(iii) measures to avoid or reduce the adverse effects of the changes on employees; and</p> <p>(c) commence discussions as soon as practicable after a definite decision has been made.</p> <p>30.2 For the purposes of the discussion under clause 30.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:</p> <p>(a) their nature; and</p> <p>(b) their expected effect on employees; and</p> <p>(c) any other matters likely to affect employees.</p> <p>30.3 Clause 30.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.</p> <p>30.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under</p>	<p><b>Substantially the same as Award</b></p> <p>The consultation provisions are substantially the same as the Award.</p>





Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>clause 30.1(b).</p> <p>30.5 In clause 30 significant effects, on employees, includes any of the following:</p> <p>(a) termination of employment; or</p> <p>(b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or</p> <p>(c) loss of, or reduction in, job or promotion opportunities; or</p> <p>(d) loss of, or reduction in, job tenure; or</p> <p>(e) alteration of hours of work; or</p> <p>(f) the need for employees to be retrained or transferred to other work or locations; or</p> <p>(g) job restructuring.</p> <p>30.6 Where this award makes provision for alteration of any of the matters defined at clause 30.5, such alteration is taken not to have significant effect.</p> <p><b>31. Consultation about changes to rosters or hours of work</b></p> <p>31.1 Clause 31 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.</p> <p>31.2 The employer must consult with any employees affected by the proposed change and their representatives (if any).</p> <p>31.3 For the purpose of the consultation, the employer must:</p> <p>(a) provide to the employees and representatives mentioned in clause 31.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and</p> <p>(b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.</p> <p>31.4 The employer must consider any views given under clause 31.3(b).</p> <p>31.5 Clause 31 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.</p>	
<b>26 EMPLOYEE RIGHT TO DISCONNECT</b>	<p>26.1 This clause provides for the exercise of an Employee's right to disconnect under section 333M of the FW Act.</p> <p>26.2 The Company must not directly or indirectly prevent an Employee from exercising their right to disconnect under the FW Act.</p> <p>26.3 This clause does not prevent the Company from requiring an Employee to monitor, read or respond to contact, or attempted contact, from the Company outside of the Employee's working hours where the Company's contact is to notify the Employee that they are required to attend or perform work or notify them of a recall to work.</p>		<p><b>14A. Employee right to disconnect</b></p> <p>14A.1 Clause 14A provides for the exercise of an employee's right to disconnect under section 333M of the Act.</p> <p>NOTE:</p> <p>(a) Section 333M provides that, unless it is unreasonable to do so, an employee may refuse to monitor, read or respond to contact, or attempted contact, from:</p> <p>(1) their employer outside of the employee's working hours,</p> <p>(2) a third party if the contact or attempted contact relates to, their work and is outside of the employee's working hours.</p> <p>(b) Section 333M(3) lists matters that must be taken into account in determining whether an employee's refusal is unreasonable.</p> <p>(c) Section 333M(5) provides that an employee's refusal will be unreasonable if the contact or attempted contact is required under a law of the Commonwealth, a State or a Territory.</p>	<p><b>Different to Award</b></p> <p>The Proposed Agreement and the Award confirm the employee's right to disconnect in accordance with section 333M of the FW Act.</p> <p>However, the Proposed Agreement provides examples of employees being contacted in broader circumstances than the Award (i.e. in order to notify employees that they are required to attend or perform work in any circumstances, not just of an emergency roster change).</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			<p>(d) Section 333N provides for the resolution of disputes about whether an employee's refusal is unreasonable and about the operation of section 333M.</p> <p>(e) The general protections in Part 3–1 of the Act prohibit an employer taking adverse action against an employee because of the employee's right to disconnect under section 333M of the Act.</p> <p>14A.2 Clause 14A applies from the following dates:</p> <p>(a) 26 August 2024—for employers that are not small business employers on this date and their employees.</p> <p>(b) 26 August 2025—for employers that are small business employers on 26 August 2024 and their employees.</p> <p>14A.3 An employer must not directly or indirectly prevent an employee from exercising their right to disconnect under the Act.</p> <p>14A.4 Clause 14A.3 does not prevent an employer from requiring an employee to monitor, read or respond to contact, or attempted contact, from the employer outside of the employee's working hours where:</p> <p>(a) the employee is being paid the stand-by allowance under clause 1.2; and</p> <p>(b) the employer's contact is to notify the employee that they are required to attend or perform work or give other notice about the stand-by.</p> <p>14A.5 Clause 14A.3 does not prevent an employer from contacting, or attempting to contact, an employee outside of the employee's working hours in circumstances including to notify them of a recall to work under clause 21.8.</p>	
27 REDUNDANCY	<p>Definition of redundancy</p> <p>(a) An Employee is made redundant where an Employee's employment is terminated at the Company's initiative:</p> <p>(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</p> <p>(ii) because of insolvency or bankruptcy of the Company.</p> <p>(b) This clause does not apply to Employees engaged for a fixed term or a specified task.</p>		<p><b>34. Redundancy</b></p> <p>34.1 The redundancy arrangements in this award are an industry-specific redundancy scheme and, as such, Subdivision B of Division 11 of the NES does not apply.</p> <p>34.2 Definition of redundancy</p> <p>(a) An employee is made redundant where an employee's employment is terminated at the employer's initiative:</p> <p>(i) because the employer 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</p> <p>(ii) because of insolvency or bankruptcy of the employer.</p> <p>(b) Clause 34.2 does not apply to employees engaged for a fixed term or a specified task.</p>	<p><b>Substantially the same as Award and NES</b></p> <p>The Proposed Agreement and the Award both confirm that the NES provides for the minimum redundancy entitlements for employees.</p> <p>The circumstances which give rise to a redundancy under the Proposed Agreement are substantially the same as the NES.</p> <p>As stated above, the Proposed Agreement confirms that employees are employed to work at deployments within a hub as directed by the Company from time-to-time and sets out the conditions on changing hubs.</p> <p>This means that employees can be moved to different workplaces within a hub (upon the provision of 28 days' notice) and if the need for work at one site in the hub decreases or comes to an end, and the Company can provide work at another site in the hub, the Company can move employees to where it has work in the hub.</p> <p>It is the Company's position that if a need for work at one mining operation in the hub is coming to an end, and the Company can provide work at another mining operation in the hub, the Company can move you to where it has work in the hub and if this occurs your employment is not terminated by the Company. In these circumstances it is the Company's position that no redundancy pay would be payable if you decide to end your employment rather than continue</p>



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
				your employment with the Company in the other location.
	<b>Redundancy payment</b> 27.2 Except where clause 27.4 applies, when terminations of employment occur due to redundancy the Employees terminated are entitled to redundancy pay equal to the greater of:  (a) the amount the Employee would be entitled to under the relevant modern award; or  (b) for the term of this Agreement, the amount of redundancy pay payable under the BHP Redundancy Termination Australia Policy, as amended from time to time.		34.3 Severance payment  Except where clause 34.5 applies, when terminations occur due to redundancy the employees terminated are entitled to severance pay equal to one ordinary week's pay for each completed year of employment.  34.4 Retrenchment payment  (a) Except where clause 34.5 applies, where redundancies occur due to:  (i) technological change;  (ii) market forces; or	<b>More beneficial than Award and NES</b>  During the nominal term, the Proposed Agreement provides for redundancy pay in accordance with BHP's Redundancy Policy which currently provides for redundancy payment of 14 weeks base salary plus 2 ½ weeks base salary per year of continuous service (pro-rata for completed months of service). This Policy will be managed outside of the Proposed Agreement after the Proposed Agreement expires.  The Proposed Agreement also confirms that Night Shift Allowance will be included in redundancy pay (if eligible).  Additionally, the Proposed Agreement also confirms that the NES provides for the minimum entitlement to redundancy pay and regardless of the length of employment, Employees will receive at least four (4) weeks' pay.
	27.3 The entitlements under clause 27.2 will not be less than:  (a) the NES;  (b) for the term of this Agreement, the entitlements in the Policy as at the commencement of this Agreement;  (c) regardless of length of employment, four weeks' pay.  27.4 Night Shift Allowance is included in redundancy pay in accordance with clause 7.10 (if eligible).		(iii) diminution of reserves,  the employees terminated are entitled to retrenchment pay equal to 2 ordinary weeks' pay for each completed year of employment up to a maximum of 30 weeks' pay. This payment is additional to the payment prescribed in clause 34.3.  (b) Regardless of length of employment, the minimum payment due to employees under clause 34.4(a) is 2 ordinary weeks' pay.  (c) Despite clause 34.4(a), an employee who as at 20 March 2017 (the operative date) had more than 15 completed years of employment and after the operative date is made redundant will be entitled to retrenchment pay equal to 2 ordinary weeks' pay for each completed year of employment as at the operative date. This payment is additional to the payment prescribed in clause 34.3.	Accordingly, the redundancy pay provisions in the Proposed Agreement are <b>more beneficial</b> than the Award and NES.
	<b>27.5 Exemption</b>  Subject to the NES, the Company is not liable for any payment in clause 27.2 if the Company would not have been required to make a payment of redundancy pay to the Employee under the relevant modern award as in force from time to time.		34.5 Exemption  An employer is not liable for the payment in clauses 34.3 and 34.4 if the employer obtains, or causes to be made available for the employee, work:  (a) that the employee is competent to perform;  (b) in a position that carries the same or a higher classification rate of pay than the employee's previous position;  (c) that can reasonably be regarded as permanent; and  (d) allows the employee to reside in the same general locality as the employee's previous residence.	<b>Substantially the same as Award</b>  The Proposed Agreement makes clear that the Company is only liable to make a redundancy payment under the Proposed Agreement if it would be required to make a redundancy payment under the Award.  Accordingly, the Proposed Agreement and the Award are substantially the same in relation to the circumstances when a redundancy payment is to be made.
	<b>27.6 Variation of redundancy 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 27.		34.6 Variation of retrenchment pay  Despite anything in clause 34, an employer may make application to the Fair Work Commission to be granted relief from the obligation to make a payment pursuant to clause 34.4. A dispute over what is just and expedient may be resolved through the procedure at clause 32—Dispute resolution.	<b>Substantially the same as Award</b>  Both the Proposed Agreement and the Award confirm the ability for the employer to apply to the FWC to vary redundancy pay in certain circumstances.
<b>28 TERMINATION OF EMPLOYMENT</b>	28.1 An Employee may resign from their employment with the Company by giving one week's written notice to the Company.	<b>Section 117 - Requirement for notice of termination or payment in lieu</b>	<b>33. Termination of employment</b>  NOTE: The NES sets out requirements for notice of termination by an employer.	<b>More beneficial than the Award and NES</b>  The Proposed Agreement is more beneficial than the



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms	Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term	
	<p>28.2 Subject to clause 28.3, 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. If an Employee is paid in lieu of notice of termination, payment will be at an Employee's Minimum Annual Salary rate (or contractual annual salary if higher, in accordance with clause 7.4). Night Shift Allowance is payable on payment in lieu of notice of termination in accordance with clause 7.10 (if eligible).</p> <p>28.3 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 period of up to 6 months continuous service. During the period of probation, the Company may terminate the 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>28.4 The period of notice to be given by the Company to Full Time or Part Time Employees under clause 28.2 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.</p>	<p>Notice specifying day of termination</p> <p>(1) An employer must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).</p> <p>Note 1: Section 123 describes situations in which this section does not apply.</p> <p>Note 2: Sections 28A and 29 of the Acts Interpretation Act 1901 provide how a notice may be given. In particular, the notice may be given to an employee by:</p> <p>(a) delivering it personally; or</p> <p>(b) leaving it at the employee's last known address; or</p>	<p>See sections 117 and 123 of the Act. Clause 33 supplements the entitlement to notice of termination in the NES and provides industry specific detail.</p> <p>33.1 Notice of termination by an employee</p> <p>(a) Clause 33.1 applies to all employees except those identified in sections 123(1) and 123(3) of the Act.</p> <p>(b) An employee must give the employer at least one week's notice of termination of employment.</p> <p>(c) If an employee does not give the period of notice required under clause 33.1(b), then the employer may deduct from wages due to the employee under the award an amount that is no more than one week's wages for the employee.</p> <p>(d) If the employer has agreed to a shorter period of notice than that required under clause 33.1(b), then no deduction can be made under clause 33.1(c).</p> <p>(e) Any deduction made under clause 33.1(c) must not be unreasonable in the circumstances.</p>	<p>Award because:</p> <ul style="list-style-type: none"><li>the Proposed Agreement requires the Company to provide four (4) weeks' notice of termination, regardless of the employee's length of service as compared to the NES which provides for 1 – 3 notice of termination for employees with not more than 5 years' service and the Award only provides for 4 weeks notice of termination for all employees and an additional week of notice of termination for employees over the age of 45 in circumstances of redundancy; and</li><li>the Award allows the Company to deduct wages in certain circumstances if the employee does not provide the requisite notice of termination. The Proposed Agreement does not provide for an equivalent entitlement.</li></ul>	
	<p>28.5 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>	<p>(c) sending it by pre-paid post to the employee's last known address.</p> <p>Amount of notice or payment in lieu of notice</p> <p>(2) The employer must not terminate the employee's employment unless:</p> <p>(a) the time between giving the notice and the day of the termination is at least the period (the minimum period of notice) worked out under subsection (3); or</p> <p>(b) the employer has paid to the employee (or to another person on the employee's behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee's behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.</p> <p>(3) Work out the minimum period of notice as follows:</p> <p>(a) first, work out the period using the following table:</p> <table><tr><td>Period</td></tr></table>	Period	<p>33.2 Termination by employer</p> <p>Clause 33 does not affect the right of the employer to dismiss an employee without notice for serious misconduct and in such cases the wages will be payable up to the time of dismissal only.</p> <p>33.3 Notice of termination by an employer—redundancy</p> <p>(a) Where termination occurs due to redundancy as defined in clause 34.2 the employer must give the employee notice of termination of employment or payment instead of notice as required under sections 117(1) and 117(2) of the Act, except that the minimum period of notice is:</p> <p>(i) 4 weeks; or</p> <p>(ii) 5 weeks, if the employee is over 45 years old and has completed more than 5 years of continuous service with the employer at the end of the day the notice is given.</p> <p>(b) In clause 33.3(a) continuous service has the same meaning as in section 117 of the Act.</p>	
Period					



Agreement clause	Proposed Agreement Term	Key provisions of the National Employment Standards relevant to application of the terms				Black Coal Mining Award 2020 Term	Explanation of the Effect of Proposed Agreement Term
			Employee's period of continuous service with the employer at the end of the day the notice is given.	Period			
		1	Not more than 1 year	1 week			
		2	More than 1 year but not more than 3 years	2 weeks			
		3	More than 3 years but not more than 5 years	3 weeks			
		4	More than 5 years	4 weeks			
		(b) then increase the period by 1 week if the employee is over 45 years old and has completed at least 2 years of continuous service with the employer at the end of the day the notice is given.					
		(4) A reference in this section to continuous service with the employer does not include periods of employment as a casual employee of the employer.					
		<b>Section 118 - Modern awards and enterprise agreements may provide for notice of termination by employees</b>					
		A modern award or enterprise agreement may include terms specifying the period of notice an employee must give in order to terminate his or her employment.					
29 NO FURTHER CLAIMS	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 FW Act.					N/A	<b>Different to Award</b> There is no equivalent provision in the Award.
APPENDIX 1	Appendix 1 sets out Minimum Annual Salaries.	N/A				A separate comparison of Award and Agreement rates has been made available for you.	
APPENDIX 2	Appendix 2 sets out allowances.	N/A				A separate comparison of Award and Agreement allowances has been made available for you.	