



APNGD0014

DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Illawarra Coal Holdings Pty Ltd T/A South32
(AG2019/807)

APPIN COLLIERY & WEST CLIFF CPP ENTERPRISE AGREEMENT 2018

Coal industry

COMMISSIONER JOHNS

SYDNEY, 10 APRIL 2019

Application for approval of the Appin Colliery & West Cliff CPP Enterprise Agreement 2018.

[1] An application has been made for approval of an enterprise agreement known as the *Appin Colliery & West Cliff CPP Enterprise Agreement 2018* (**the Agreement**). The application was made pursuant to s.185 of the *Fair Work Act 2009* (Cth) (**the Act**). It has been made by Illawarra Coal Holdings Pty Ltd T/A South32. The Agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met.

[3] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[4] The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**), “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (**AMWU**) and The Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) being bargaining representatives for the Agreement, have each given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers the organisations.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 17 April 2019. The nominal expiry date of the Agreement is 16 April 2022.

COMMISSIONER

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Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.

**APPIN COLLIERY & WEST CLIFF CPP
ENTERPRISE AGREEMENT
2018**

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1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this document, unless the context requires otherwise.

“5-day weekend roster Employee” means an Employee whose roster cycle is 5 days and includes Saturday and/or Sunday.

“6-day roster Employee” means an Employee who over the roster cycle is rostered to work on any 6 days of the week.

“7-day roster Employee” means an Employee who over the roster cycle is rostered to work on any of the 7 days of the week.

“Afternoon shift” means a shift where the ordinary hours end after 6:00pm and at or before midnight.

“As if at work” means the sum of the Employee’s Classification Rate, Bonus, Rostered overtime, and if applicable, Weekend penalties, Shift Allowance and Allowances referred in Appendix 1 – Rates of Pay & Allowances.

“Classification Rate” means the rate per hour set out in Appendix 1 – Rates of Pay & Allowances, of this Agreement for the Classification. The Classification Rate does not include any Allowances.

“CPP” means the West Cliff Coal Preparation Plant.

“Fixed weekend roster” means a roster which involves the working of ordinary hours on any consecutive days of the week and includes at least the majority of one rostered shift being worked on a Saturday and/or a Sunday.

“Immediate family” means:

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee.

“NES” means the National Employment Standards

“Night shift” means a shift where the ordinary hours finish after midnight and at or before 10:00am.

“Non-rostered overtime” means overtime which does not form a part of an Employee’s roster.

“Ordinary Weeks Pay” means a 35 hours pay that is paid at the Employee’s Classification Rate.

“Public Holiday” means a 24 hour period commencing at 00:00 on the day of the gazetted Public Holiday.

“Rostered overtime” means overtime which the Employee is required to work that forms a part of the Employee’s roster.

“Year” means a calendar year ie. 1 January – 31 December unless otherwise specified.

2 Application

- 2.1 This Agreement is made under the provisions of Part 2-4 of the *Fair Work Act 2009 (FW Act)* and shall operate seven days after the Agreement is approved by the Fair Work Commission (**FWC**). The nominal expiry date of this Agreement will be three years from the date of approval.
- 2.2 This Agreement applies to and is binding upon Illawarra Coal Holdings Pty Ltd, in respect of Appin Colliery and the West Cliff CPP (the **Company**); and Employees who are employed at Appin Colliery and the West Cliff CPP in the classifications set out in this Agreement.
- 2.3 The Agreement covers the Construction, Forestry, Maritime, Mining and Energy Union, (**CFMMEU**) the Communications, Electrical and Plumbing Union of Australia (**CEPU**) and, the Australian Manufacturing Workers Union (**AMWU**) in respect of their role in representing the Employees who are members.
- 2.4 It is the intention of the parties to this Agreement that it is a comprehensive document, containing all matters relating to the terms and conditions of employment for Employees. In the event that a matter arises that is not dealt with by the Agreement, and cannot be resolved by the parties within the terms of the Agreement, for the purposes of giving guidance to the parties about the matter, regard will be had to the Black Coal Mining Industry Modern Award.
- 2.5 This Agreement will be read and interpreted in conjunction with the NES. Where there is an inconsistency between this Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

3 Introduction of Major Change

- 3.1 The model consultation term in the Fair Work Regulations shall be a term of this Agreement.

4 Employment

- 4.1 Employees may be engaged on a full-time, part-time, fixed-term or casual basis in accordance with the provisions of this Agreement.
- 4.2 Any positions at Appin Colliery that become available will be advertised internally on a prominent notice board, at each site, for a period of not less than 2 weeks.
- 4.3 Employment of full-time, part-time and fixed-term Employees will be on a weekly basis.
- 4.4 The first 3 months of employment shall be a probationary period during which performance will be reviewed. Continuing employment during and at the conclusion of the probation period will depend upon the Employee being regarded by the Company as meeting an acceptable level of performance.
- 4.5 If an Employee terminates, or has their employment terminated during or at the end of the probationary period, the termination will be by 1 weeks' notice or payment of 1 week in lieu of notice other than for serious misconduct.
- 4.6 **Full-time Employment**
- 4.6.1 The average ordinary hours of work will be 35 hours per week. When calculating average ordinary hours, the maximum period that will be averaged for each Employee will be no greater than their roster cycle.
- 4.6.2 Arrangements for full-time Employees to work less than 35 hours per week will only be implemented by agreement.

4.7 **Part-time Employment**

- 4.7.1 An Employee who is employed to work on a part-time basis for a constant number of hours, having regard to the various ways of arranging ordinary hours, will average less than 35 hours per week.
- 4.7.2 A part-time Employee will be paid per hour one thirty fifth of the weekly ordinary wage for the Employee's classification, and will be entitled to payments in respect of Annual Leave, and Personal/Carer's leave on a proportionate basis.
- 4.7.3 The Company and the Employee will agree in writing on a regular pattern of work which will include: hours to be worked each day, days of the week to be worked and starting and finishing times.
- 4.7.4 Hours worked in excess of the hours agreed will be classified as overtime, and paid in accordance with this Agreement.

4.8 **Fixed-term Employment**

An Employee who is employed to work on a temporary basis for a fixed period of time or to complete a specific scope of work. Leave entitlements will be calculated on a pro- rata basis.

4.9 **Casual Employment**

A casual Employee, for working ordinary time, will be paid per hour one thirty-fifth of the weekly ordinary wage rate for the Employee's classification plus 25% in lieu of entitlements under Personal Carer's Leave, Annual Leave and recognised Public Holidays; with a minimum of 4 hours payment.

5 Performance of Work

- 5.1 Employees will perform work in a fully flexible manner within their employment classification as is reasonably required by the Company and which is in accordance with their ability and competence.
- 5.2 An Employee absent from work, or not performing work, will not be paid for the period of absence or non-performance unless payment is permitted by this Agreement, or the law.
- 5.3 Absenteeism will be dealt with in accordance with the FW Act and this Agreement.
- 5.4 When the Company deals with an Employee on a disciplinary matter procedural fairness will apply, guided by the process provided clause 28 Disputes Resolution Process.
- 5.5 The Company may dismiss an Employee without notice for serious misconduct.
- 5.6 **Stand down**
 - 5.6.1 The Company may stand down an Employee for part or all of a day for: refusal or neglect of duty; misconduct; or if the Employee cannot be usefully employed in the Employee's usual classification because of industrial action impacting the operation.
 - 5.6.2 The Company may stand down an Employee if the Employee cannot be usefully employed in the Employee's usual classification because of a breakdown of machinery or significant operational issue at Appin Colliery that has lasted for more than 4 consecutive working days and which impacts on the operations of Appin Colliery. The day of the breakdown is counted as one of the 4 consecutive working days if it happens to be a working day for the Employee.
 - 5.6.3 An Employee will not be paid while stood down, but may access Annual or Long Service Leave entitlements.

6 Hours of Work

6.1 Ordinary Hours

- 6.1.1 The average ordinary hours of work will be 35 hours per week.
- 6.1.2 Ordinary hours may be averaged over a period or a roster cycle, subject to the agreement of the majority of affected Employees covered by this Agreement.
- 6.1.3 In the event hours are averaged, payment of rostered hours may be averaged over the period, subject to the agreement of the majority of affected Employees.

6.2 Payment of Shift Allowances and for Ordinary hours worked on a weekend

The payments for shift allowances and ordinary hours worked on a weekend are set out in Appendix 3 – Payment Rules. The weekend penalties apply from midnight to midnight on each of the weekend days.

6.3 Shift Work and Rosters

- 6.3.1 The Company may implement the following non-rotating, consecutive day roster arrangements, including shift lengths of shorter duration:
 - a) Weekday shifts of up to 8 hours where working 5 days
 - b) Weekday shifts of up to 10 hours where working 4 days
 - c) Weekday shifts of 12 hours when working 3 days
 - d) Weekend shifts of up to 12 hours where working 3 days (Saturday to Monday or Friday to Sunday)

Other rosters may be implemented by agreement with the affected Employees.

6.4 Roster Trial

- 6.4.1 During the operation of the Agreement, Employees agree to participate in a three month trial of working a roster of weekday shifts of up to 10.5 hours where working 4 days.
- 6.4.2 At the conclusion of the three month trial:
 - a) if the majority of Employees who will continue to work on the trialled roster support its introduction, then “weekday shifts of up to 10.5 hours where working 4 days” will be taken to be a roster arrangement for the purposes of clause 6.3.1; or
 - b) if there is not majority support from Employees who would otherwise work the trialled roster, then the Company may request the FWC to conciliate and, if required, arbitrate the introduction of a roster arrangement of 10.5 hour weekday shifts across 4 days in accordance with the Dispute Resolution Process set out at clause 28 of this Agreement.
- 6.4.3 Any arbitration required in respect of the proposed introduction of weekday shifts of up to 10.5 hours where working 4 days:
 - a) will be conducted by a single member of the FWC; and
 - b) will not be the subject of any rights of appeal.

6.5 **Shift/Roster allocation**

- 6.5.1 Where shift/roster changes are required, volunteers will be called for in the first instance. Shift and roster movements may be recommended, on a volunteer first basis, by affected Employees and Workforce Representatives.
- 6.5.2 The Company will determine the final Employee allocation to shifts and rosters, recognising Employee length of service, skills and performance and any recommendation made by affected Employees and Workforce Representatives.
- 6.5.3 For all shift/roster changes, when an Employee is nominated by the Company to change to a different shift/roster pattern, the change will take place no sooner than 3 weeks after the Employee has received notification.
- 6.5.4 If an issue arises concerning the change, it will be discussed during the 3 week notice period and if at the end of the notice period the issue is not resolved, the Employee will then be placed on the nominated shift/roster pattern.

6.6 **Temporary change of Shift**

- 6.6.1 If an Employee is required by the Company to change shift for a temporary period, then the Employee will not be financially disadvantaged and if the Employee has not received 1 weeks' notice shall be paid at overtime rates for the first shift worked.
- 6.6.2 When requested by an Employee to be temporarily allocated to a different shift/roster pattern, individual circumstances will be considered by the Company in determining whether or not to temporarily allocate an Employee.

6.7 **Shift Starting Times**

- 6.7.1 For shifts greater than 10 hours, the nominated start time for:
 - a) Day shifts is between 6:00am and 8:00am
 - b) Night shifts is between 6:00pm and 8:00pm
- 6.7.2 Other start times for shifts greater than 10 hours may be implemented by agreement with the affected Employees.

6.8 **Starting and Finishing Places**

- 6.8.1 Employees undertaking their normal duties, underground or on the surface will finish their shift at the same place at which they started on the surface or muster area.
- 6.8.2 An employee may work at more than one place during the course of a shift. They will always finish the shift where their means of transport home is located.
- 6.8.3 In unforeseen circumstances, a temporary change (up to a period of 1 week) to the Employee's usual starting place will take place provided that the Company notifies the Employee the day before the change commences.
- 6.8.4 For a permanent change, 1 weeks' notice will be given.

6.9 **Late Shift finish times**

Employees are required to finish work at their rostered or otherwise designated time. Where the finishing time of an Employee is greater than a 10 minute window past the rostered or otherwise designated time, then the payment will be adjusted to the nearest 10 minute increment.

7 Rates of Pay

The Classification Rates and allowances for Appin Colliery are set out Appendix 1 – Rates of Pay & Allowances, and for the West Cliff CPP are set out in Appendix 5 – West Cliff CPP.

7.1 *Inexperienced Employees*

7.1.1 An Inexperienced Employee is an Employee with less than 12 months coal mining industry experience and has not attained all the relevant skills to work unaccompanied within all areas of the relevant operations.

7.1.2 An Inexperienced Employee will be paid at 90% of the applicable Classification Rate for a period of no longer than 12 months.

7.2 *Operation of the classifications*

7.2.1 When an Employee is paid at the Underground Operator/Underground Trades classification, the Employee will retain that rate of pay even though they may no longer be required to undertake an underground role.

7.2.2 To be paid at the Specialist rate of pay, the Employee must be appointed by the General Manager. Where an Employee is no longer required to undertake the duties of the appointed classification, the Employee will retain that rate of pay, without any further increase, until they can be paid at the Underground Operator/Underground Trades classification without their rate of pay being reduced.

7.3 *Payment for Company initiated training*

Employees will be paid as if at work when they attend Company initiated training. If the total hours of attendance at work and at training exceeds the Employee's normal rostered hours, the additional hours will be paid at overtime rates.

8 Bonus

The Bonus will be determined by adding \$500 to a performance recognition payment set out in Appendix 2 – Recognition Payment.

8.1 *Eligible Employees*

8.1.1 The Bonus will be paid to Employees for attendance at work on rostered shifts and for any paid absence, except for Accident Pay paid from the 40th week.

8.1.2 The Bonus will only be paid on unpaid absences if specified in this Agreement.

8.1.3 For unpaid absences, the Bonus that would otherwise be paid to an Employee will be reduced by the unpaid ordinary hours for that absence.

8.2 *Average Bonus*

The Average Bonus is the average of the bonus payments made in the 12 months from 1 December of one year and 30 November of the next.

8.3 *Bonus Payments in certain circumstances*

8.3.1 The Average Bonus will be applied and where an Employee salary sacrifices Personal/Carers leave in accordance with clause 10.2, and where an Employee elects to cash out Personal/Carers leave in accordance with clause 18.7.

8.3.2 For Long Service Leave taken in service and Public Holidays, bonus will be payable.

9 Superannuation

9.1 Application

Superannuation contributions are required under the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth).

9.2 Contribution Rate

9.2.1 The Company will make superannuation contributions at a rate of 9.5% of ordinary time earnings (OTE) on behalf of each Employee.

9.2.2 Where legislative changes occur which change the required Company contribution rate, the Company will adjust the contribution rate to the required level.

9.3 Ordinary Time Earnings

A reference to OTE in this clause will mean the total of the following:

9.3.1 earnings in respect of ordinary hours of work other than earnings consisting of a lump sum payment of any kind made to the Employee on the termination of their employment and lump sum payment in relation to cashing out of Personal/Carer's leave;

9.3.2 earnings in respect of the Bonus;

9.3.3 earnings in respect of shift work rates and weekend penalty rates;

9.3.4 earnings in respect of overtime that forms part of a roster pattern of work; and

9.3.5 earnings in respect of allowances which are not a reimbursement of expenses.

9.4 Choice of Fund

9.4.1 The Company will pay the superannuation contributions referred to in this clause into the Employee's fund of choice, which is agreed to by the Company, provided that contributions to that fund will satisfy the Company's obligations under the *Superannuation Guarantee (Administration) Act 1992 (SGA Act)*.

9.4.2 If an Employee does not choose a fund or the fund that the Employee has chosen ceases to be a fund to which the Company can contribute to satisfy its obligations under the SGA Act, the Company will make contributions to the Mine Super Fund, or its successor.

9.5 Salary Sacrifice

9.5.1 If the Company makes additional superannuation contributions on behalf of an Employee under the salary sacrifice arrangements referred to in clause 10, the Company agrees that these contributions will not reduce the Company's obligation to make contributions under sub-clause 9.2.

9.5.2 If an Employee chooses to make salary sacrifice contributions under clause 10, the Company agrees that the Employee's pre-salary sacrifice pay rate will be used to calculate OTE under sub-clause 9.3.

10 Salary Sacrifice

10.1 Additional Wage Contributions to Superannuation

10.1.1 Provided that there is no additional cost incurred by the Company and as long as taxation and other legislation permits, the Company may agree to any reasonable

request by an Employee to make additional contributions on behalf of that Employee to the Employee's fund of choice, under a salary sacrifice arrangement. This will result in a reduction in the Employee's remuneration.

- 10.1.2 These contributions can either be a percentage of weekly gross wage or a fixed dollar amount. If a fixed dollar amount is nominated, this will be in multiples of 10 dollars only. It is the Employee's responsibility to ensure any salary sacrifice arrangement does not impact their ability to make all other nominated deductions.
- 10.1.3 If an Employee wishes to commence or alter a salary sacrifice arrangement under sub-clause 9.5, the Employee must notify the Company in writing at least 4 weeks prior to the commencement of the change.

10.2 **Personal/Carer's Leave into Superannuation**

- 10.2.1 Personal/Carers leave which is in excess of the minimum required by the Act may be salary sacrificed by the Employee for future entitlements. If an Employee wishes to commence this salary sacrifice arrangement, the Employee must notify the Company in writing at least 4 weeks prior to the commencement of the financial year. If the Company agrees to the Employee's request, the arrangement will commence from the commencement of the financial year.
- 10.2.2 If an Employee wishes to enter into a salary sacrifice arrangement under this clause they must have a minimum balance of 105 hours of Personal/Carer's leave to be eligible to enter into a salary sacrifice arrangement.

10.3 **Novated Leasing Motor Vehicle**

Employees may salary sacrifice for the purpose of entering into a novated lease vehicle arrangement, as long as there is no cost to the Company and subject to continuation of this arrangement under Illawarra Coal corporate arrangements. The lease is the responsibility of the Employee and the lease provider. The lease provider will be nominated by the Company.

11 Protective Clothing

- 11.1 Appropriate industrial clothing and safety footwear will be provided and is to be worn at all times whilst performing work at the Site, unless otherwise directed.
- 11.2 A laundry service enabling clean clothes on a daily basis will be provided at no charge to Employees.

12 Payment of Wages

- 12.1 Wages will be paid each week by Electronic Funds Transfer (EFT) into the Employee's personal account(s) up to the limit of the Company payroll system, at any participating bank or financial institution.
- 12.2 Upon termination of employment, wages due to an Employee will be paid by EFT into the personal account nominated by the Employee.

13 Meal Breaks

- 13.1 Meal breaks may be taken, and be counted as time worked, in accordance with the following table.

Shift Length	Number and duration
Up to and including 8 hours	1 meal break of 30 minutes

Shift Length	Number and duration
Greater than 8 hours and up to and including 10.5 hours	1 meal break of 30 minutes 1 meal break of 15 minutes
Greater than 10.5 hours	2 meal breaks of 30 minutes

- 13.2 Meal breaks and other short duration comfort breaks will be taken so as to ensure that there is no interruption to production or to the activity being undertaken at the time.
- 13.3 Employees will not be compelled to work more than 5 hours without a meal break.

14 Overtime

14.1 An Employee must work reasonable overtime, as required by the Company to meet the needs of the business. Overtime is to be pre-arranged before the start of the period of overtime commencing.

14.2 The Company will review the allocation of overtime when requested by Employees and take steps to provide an equitable opportunity for Employees to work overtime if required.

14.3 Call-Back

14.3.1 An Employee called back to work overtime after leaving the Colliery, whether notified before or after leaving the Colliery, shall be paid for a minimum of 4 hours work at the appropriate rate for each time called back.

14.3.2 The Employee will not be required to work the full 4 hours if the job to be performed is completed within a shorter period.

14.3.3 This sub-clause shall not apply in cases where it is customary for an Employee to return to work to perform a specific job outside the Employee's ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

14.3.4 Where the call back duration is less than 4 hours, the overtime will not be regarded for the purposes for a rest period as prescribed in this clause.

14.4 Overtime Meals

14.4.1 If the period of overtime an Employee is required to work is more than one and a half hours (exclusive of crib time) then the Employee will, unless agreed otherwise, before starting this overtime be allowed at least 30 minutes for a meal without deduction of pay. 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.

14.4.2 After each 4 hours of overtime worked after a crib break, the Employee will have a further crib break and either be supplied with a meal or be paid a meal allowance.

14.4.3 Meal allowance is paid as set out in Appendix 1 – Rates of Pay & Allowances.

14.5 Transport Home after Overtime

An Employee who is requested to work back and whose normal means of transport home is not available, shall have transport arranged by the Company to their home. If such transport is by taxi, all costs will be made directly by the Company.

14.6 ***Rest Period after Working***

- 14.6.1 Work will be arranged for Employees to have at least 10 consecutive hours off between successive days of work.
- 14.6.2 Where the Employee does not get a 10 hour rest the following conditions apply:
- a) the Employee will be released after that work is finished until the Employee has had 10 consecutive hours off; and
 - b) there will be no loss of pay for ordinary hours of work time which occur during this absence.
- 14.6.3 An Employee who, on the instructions of the Company, resumes or continues work without having had 10 consecutive hours off will be paid in accordance with the provisions in Appendix 3 – Payment Rules.

15 Public Holidays

15.1 ***Recognised Public Holidays***

- 15.1.1 The recognised Public Holidays are: New Year's Day, Australia Day, Good Friday, Easter Monday, Easter Tuesday, ANZAC day, Queen's Birthday, Labour Day, Christmas Day, and Boxing Day.
- 15.1.2 Any other day observed as a Public Holiday in the particular region in lieu of one of the above days and all other Public Holidays gazetted for the particular region will also be recognised.
- 15.1.3 In the event that a gazetted Public Holiday coincides with Easter Tuesday, an additional Public Holiday will apply to another day to be determined by agreement.

15.2 ***Transfer of recognised Public Holidays***

Where requested by the majority of Employees affected, the Company may agree to observe a holiday on a day other than the day prescribed above. If this occurs, the day agreed becomes the recognised Public Holiday and the actual holiday becomes an ordinary working day.

15.3 ***Provision of Labour on Recognised Public Holidays***

- 15.3.1 Subject to the NES, on Public Holidays there will be minimum coverage provided to allow the Colliery to stay open for statutory inspections. This includes surface competent persons (surface electrical trades) and mechanical trades for environmental and winders inspections. Additionally, underground mechanical and electrical trades will be on standby and available for breakdowns, and also will be required for inspections to repower to allow the Colliery to resume normal operations.
- 15.3.2 Any other work on Christmas Day (25th December) and Boxing Day (26th December) will be by volunteers only.
- 15.3.3 Weekday roster Employees will not be required to work more than 3 Public Holidays each year. Volunteers will be initially called for 4 weeks prior to the Public Holiday. Where insufficient Employees volunteer, the Company will provide formal notification 2 weeks prior to the Public Holiday to additional Employees required to work. The Company will take into account the number of Public Holidays the Employee has previously worked during the previous 12 months.
- 15.3.4 Weekend roster Employees will nominate 2 Public Holidays each year that they will not be required to work. If not nominated by Employees, the Company will determine the 2 Public Holidays not required to be worked. If the 25th and 26th December fall

during the ordinary days of the weekend roster, these will be the days not worked by these Employees. Weekend roster Employees will be required to work on all other Public Holidays that fall within their roster.

15.4 **Payment for Recognised Public Holidays**

15.4.1 Payment for Public Holidays is set out in Appendix 3 – Payment Rules.

15.4.2 Weekend roster Employees, will be paid for all recognised Public Holidays whether or not they form part of their roster.

16 Annual Leave

16.1 **Rate of Accrual**

An Employee will be credited Annual Leave at the end of each pay period. The amount of Annual Leave credited depends upon the Employee's roster. The entitlements are:

Roster	Weekly Accrual	Annual Equivalent
Monday to Friday only	3.3654 hours	5 weeks
6-day roster	3.3654 hours	5 weeks
7-day roster	4.0385 hours	6 weeks
Rosters which require work on Public Holidays and at least 34 Sundays per year.	4.0385 hours	6 weeks

16.2 **Taking of Leave**

16.2.1 Annual Leave will be taken as applied and approved between the Company and Employee.

16.2.2 An Employee must apply in writing to the Company with 4 weeks' notice, or a shorter period as agreed, where the period of leave is greater than or equal to 1 week. For periods of Annual Leave of less than 1 week, at least 48 hours' notice is required.

16.2.3 Employees cannot apply for leave in peak holiday periods, Christmas and Easter, greater than 12 months in advance.

16.2.4 The Company will advise the Employee of that decision within 14 days of the application being made.

16.2.5 The Company must grant the leave unless in the Company's opinion the operations will be affected. Where leave is not granted, the reason will be discussed with the Employee.

16.3 **Extensive accumulated Annual Leave**

16.3.1 It is intended that Annual Leave shall be taken so that extensive accumulation of Annual Leave does not occur.

16.3.2 If an Employee has a net Annual Leave balance of at least 9 weeks leave, the Company may direct the Employee to apply for and take as much Annual Leave as required to reduce their leave balance to an annual accrual. The leave should be taken within 6 months of the direction.

16.3.3 Before the direction is made, the Company will take into account any future leave plans notified by the Employee, and any leave that had been applied for and not approved by the Company.

16.4 **Shutdowns**

If the Company shuts down the Colliery or a section of a Colliery, it must give Employees 3 weeks' notice of the shutdown. Once the notice has been given, changes to the dates of the shutdown will require only 1 weeks' notice.

16.5 **Payment**

16.5.1 The payment for the period of Annual Leave will be made either in advance (for periods of at least 1 week) of the period of Annual Leave or as the payment becomes due each week (as requested by the Employee when completing the Annual Leave application).

16.5.2 Payment for Annual Leave is set out in Appendix 3 – Payment Rules.

16.6 **Recognised Public Holiday occurring during Annual Leave**

When a recognised Public Holiday occurs during a period of Annual Leave:

16.6.1 the normal payment must be made to the Employee for that recognised Public Holiday; and

16.6.2 when a recognised Public Holiday occurs during a period of Annual Leave, no deduction from the Employee's Annual Leave accrual will be made for that day.

17 Long Service Leave

17.1 **Application of Federal Act to this Agreement**

17.1.1 The Coal Mining Industry Long Service Leave Scheme has been enacted in Commonwealth legislation; an Employee's entitlement will derive from that Act.

17.1.2 The following provisions provide a guide to the parties on the conditions upon which Long Service Leave is accrued, taken and paid during the life of this Agreement.

17.2 **Period of Leave**

Employees accrue Long Service Leave at the rate of 13 weeks for each 8 years of service in the coal mining industry.

17.3 **Service**

17.3.1 Service that accrues Long Service Leave is any period of employment, of any employment type that is in the coal mining industry.

17.3.2 Each period of service is aggregated, with previous periods of service previously accrued. Only if the break between periods of service is greater than 8 years will previous periods of service not be aggregated to current service.

17.3.3 Breaks between periods of service do not count as service.

17.4 **When Long Service Leave May Be Taken**

17.4.1 The first accrual of 13 weeks Long Service Leave may be taken at any time provided that:

- a) 4 weeks' notice is given by the Employee; and

- b) the operations of the Colliery will not, in the Company's opinion, be affected by the granting of leave at that time; and
 - c) the minimum period of leave to be taken is 2 weeks.
- 17.4.2 An Employee may take subsequent accrued Long Service Leave after each 64 weeks of service, subject to the conditions contained in this clause.
- 17.4.3 Where a recognised Public Holiday occurs during a period of Long Service Leave, no deduction from the Employee's leave accrual will be made for that day.

17.5 Payment

- 17.5.1 Payment for Long Service Leave will be in accordance with Appendix 3 – Payment Rules.
- 17.5.2 Employees will be paid for the period of Long Service Leave in accordance with the Company's normal pay periods, unless the Employee requests payment of the entire period to be made prior to the Employee commencing leave.
- 17.5.3 An Employee will not be allowed to take Long Service Leave during any period in which the Employee is paid Accident Pay.

18 Personal/Carer's Leave

18.1 Definition

Personal/Carer's Leave is defined as:

- 18.1.1 paid leave (sick leave) taken by an Employee because of a personal illness, or injury, of the Employee; or
- 18.1.2 paid or unpaid leave (carer's leave) taken by an Employee 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:
 - 18.1.3 a personal illness, or injury, of the member; or
 - 18.1.4 an unexpected emergency affecting the member.

18.2 Accrual and Accumulation

18.2.1 For each completed week of service an Employee will accrue Personal/Carer's Leave on the following basis:

Shift Length	Weekly Accrual	Annual Equivalent
7 and 8 hour shifts	2.0192 hours	105 hours
9 hour shifts	2.0770 hours	108 hours
10 hour shifts	2.1154 hours	110 hours
12 hour shifts	2.0770 hours	108 hours

18.2.2 Leave which is not taken by an Employee shall accumulate without limitation and be available to be taken.

18.3 ***Notification of an Intended Absence***

When an Employee becomes aware that they may be unable to attend for work, the Employee will first advise the Company in accordance with the process advised by the Employee's Supervisor as soon as reasonably practicable.

18.4 ***Pre-Notified Personal/Carer's Leave***

An Employee may apply in advance for leave under this clause, where the event that the Employee is seeking leave for is of a personal or carers nature.

18.5 ***Employee to prove genuine absence***

18.5.1 If required by the Company an Employee must prove to the satisfaction of the Company that the absence from work was for the purposes set out in clause 18.1.

18.5.2 In circumstances where an Employee is absent for two rostered shifts or less an Employee should confirm in advance of the absence with the Company whether a medical certificate is required for that absence.

18.6 ***Deduction of Accumulated Leave***

Personal/Carer's Leave will be deducted from the Employee's accrual on an hour for hour basis the Employee would have worked on the day of absence.

18.6.1 Any personal leave taken must be deducted from the Employee's personal leave entitlement as follows:

- a) where the absence is for fewer than half the ordinary hours component of the shift, no deduction; or
- b) in all other cases, the full ordinary hour's component of the shift will be deducted for each absence.

18.6.2 The balance of Personal/Carer's Leave will remain to the credit of the Employee.

18.7 ***Payment***

18.7.1 Personal/Carer's Leave will be paid in accordance with Appendix 3 – Payment Rules.

18.7.2 Application for payment for leave must be submitted immediately upon return to work.

18.7.3 An Employee may make an election annually in writing to cash out hours of accumulated leave. However, an Employee must maintain a minimum balance of 105 hours. Payment will be at the Employee's Classification Rate.

18.8 ***Workers' Compensation***

An Employee shall not be entitled to be paid leave in accordance with this clause for any period in respect of which the Employee is entitled to Workers' Compensation.

19 Parental Leave

19.1 Part of the unpaid Parental Leave, which may be taken in accordance with the FW Act, may be taken as paid leave under the Company's Parental Leave conditions.

19.2 Payment for paid Parental Leave will be in accordance with Appendix 3 – Payment Rules.

20 Compassionate Leave

- 20.1 An Employee will be able to access up to 2 days Compassionate Leave for each occasion when a member of the Employee's immediate family or a member of the Employee's household:
- 20.1.1 Contracts or develops a personal illness that poses a serious threat to his or her life; or
 - 20.1.2 Sustains a personal injury that poses a serious threat to his or her life; or
 - 20.1.3 Dies.
- 20.2 Employees are required to apply for leave and may be required to prove to the satisfaction of the Company the basis of the leave.
- 20.3 Payment for Compassionate Leave will be in accordance with Appendix 3 – Payment Rules.

21 Community Service Leave

- 21.1 If an Employee attends jury service the Employee is required to give proof of attendance, duration of such attendance and the amount received from the Court for such attendance.
- 21.2 An Employee who is a member of a voluntary community service (e.g. Bushfire Brigade) and who is unable to attend work due to an emergency callout is required to obtain Company approval to be absent from work and, where required by the Company to prove attendance, the duration of such attendance and the amount received for such attendance.
- 21.3 In all cases the Employee will notify the Company as soon as possible of the time and date which they are required to attend for jury service or emergency service call out.
- 21.4 Payment for Community Service Leave will be in accordance with Appendix 3 – Payment Rules.

22 Domestic Violence Leave

Leave to deal with Family and Domestic Violence will be in accordance with the Black Coal Award.

23 Flexibility Arrangements

- 23.1 An Employer and Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
- 23.1.1 the Agreement deals with one or more of the following matters: arrangements about when work is performed; overtime rates; penalty rates; allowances; leave loading;
 - 23.1.2 the arrangement meets the genuine needs of the Employer and Employee in relation to one or more of the matters mentioned in clause 23.1.1; and
 - 23.1.3 the arrangement is genuinely agreed to by the Employer and Employee.
- 23.2 The Employer must ensure that the terms of the individual flexibility arrangement:
- 23.2.1 are about permitted matters under section 172 of the *Fair Work Act 2009*;
 - 23.2.2 are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - 23.2.3 result in the Employee being better off overall than the Employee would be if no arrangement was made.

- 23.3 The Employer must ensure that the individual flexibility arrangement:
- 23.3.1 is in writing;
 - 23.3.2 includes the name of the Employer and Employee;
 - 23.3.3 is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee;
 - 23.3.4 includes details of: the terms of the Agreement that will be varied by the arrangement; and how the arrangement will vary the effect of the terms; and how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - 23.3.5 states the day on which the arrangement commences.
- 23.4 The Company must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to. A copy of this arrangement will be provided to the elected Employee Representative. The copy may be redrafted to omit information that would identify the Employee.
- 23.5 The Employer or Employee may terminate the individual flexibility arrangement:
- 23.5.1 by giving no more than 28 days written notice to the other party to the arrangement;
or
 - 23.5.2 if the Employer and Employee agree in writing at any time.

24 Employment Security

- 24.1 Nothing in this Agreement prevents the Company from using natural attrition or a process of redundancy to reduce the size of its workforce, nor does it require the Company to replace any Employee who retires or resigns.
- 24.2 The Company will not terminate the employment of Employees on the ground of redundancy in order to replace the Employees with a contractor or, have the job of the Employees performed by a contractor.
- 24.3 If a permanent position that was occupied by an Employee at the commencement of the Agreement becomes vacant and the Company determines that it is going to replace that vacant position, the Company will recruit a permanent Employee to that position.
- 24.4 The following process is triggered where there are potential terminations of Employees as a result of the Employees' positions being made redundant. The Company will take the following measures prior to any forced retrenchments:
- 24.4.1 Offer a Voluntary Redundancy Scheme; then
 - 24.4.2 The Company will place Employees subject to potential termination into ongoing supplementary labour roles performed by contractors. These Employees will continue to be employed in accordance with the terms and conditions set out in this Agreement.
- 24.5 Non-mining work, specialist tasks or intermittent tasks undertaken by contractors will continue.
- 24.6 Contractors engaged in black coal mining work at the Colliery to whom the Award applies, and who are not covered by an enterprise agreement or any transitional instrument, will not be engaged by the Company on terms that would undercut:
- 24.6.1 the Operator/Trade Classification Rate if the Employee is experienced (as adjusted from time to time in accordance with the provisions of this Agreement);

24.6.2 all other conditions as prescribed by the Award; and

24.6.3 the bonus payment in line with the principles of the Bonus Scheme of this Agreement.

25 Termination of Employment

25.1 Termination by the Employee

25.1.1 A full-time, part-time or fixed term Employee must give 1 weeks' notice in writing to terminate their employment, or a lesser period as agreed by the Company.

25.1.2 A casual Employee must give 4 hours' notice to terminate their employment.

25.2 Termination by the Company

25.2.1 The Company must not terminate an Employee's employment unless the Employee has been given either the period of notice required below, or payment instead of notice.

25.2.2 This clause does not affect the ability of the Company to dismiss an Employee without notice for serious misconduct and in such cases the Employee will only be paid up to the time of dismissal.

25.2.3 The required period of notice to an Employee is:

Period of continuous service with the Company	Period of Notice
Not more than 1 year	at least 1 week
More than 1 year but not more than 3 years	at least 2 weeks
More than 3 years but not more than 5 years	at least 3 weeks
More than 5 years	at least 4 weeks

25.2.4 In addition, the period of notice is increased by 1 week if the Employee is over 45 years old and has completed at least 2 years continuous service with the Company.

25.2.5 The above notice will be given in addition to all other entitlements provided for redundancy.

25.3 Amount of Payment Instead of Notice

The amount of payment instead of notice must be at least the amount that the Employee would have been paid if the employment had continued to the end of the required period of notice.

25.4 Deduction from Termination Pay

The Company may deduct from an Employee's termination payment, any payments made by the Company in advance.

25.5 Termination by the Company Due to Redundancy

25.5.1 Should the Company conclude that a forced retrenchment programme is necessary, they will consult with Employees in accordance with clause 3 Introduction of Major Change, in relation to measures to reduce the impact on permanent Employees covered by this Agreement.

25.5.2 Except where the following paragraph applies, payment of redundancy pay will be in accordance with Appendix 4 – Payments on Termination.

25.5.3 The Company is not liable for the payment of redundancy pay if, within 7 days of the terminations of employment of Employees, the Company obtains or causes to be made available for the Employee work:

- a) that the Employee is competent to perform;
- b) that can reasonably be regarded as permanent; and
- c) is within the Southern District (New South Wales) and operated by the Company.

25.5.4 For work that is in the coal mining industry, conditions of employment at the new workplace will be in accordance with the enterprise agreement at the new workplace.

25.5.5 For work not in the coal mining industry, it will be at the same or higher classification rate of pay.

25.5.6 Where terminations occur due to redundancy the Employees terminated are entitled to a minimum of 4 weeks' notice of termination. Payment in lieu of this notice can only be made if agreement is reached with the Employee.

25.6 **Termination whilst on Personal/Carer's Leave**

When the Company terminates the employment of an Employee during a period of absence on paid Personal/Carer's Leave, the Employee must be paid until the Employee has no further accumulation of Personal/Carer's Leave or until the Employee is fit for duty, whichever first occurs.

25.7 **Payment of Leave on Termination**

Payment for Leave on Termination will be in accordance with Appendix 4 – Payments on Termination.

26 Medical Examinations & Mines Rescue

An Employee absent to attend to a Company organised medical examination or to attend to Mines Rescue training approved by the Company will be paid in accordance with Appendix 3 – Payment Rules. These absences will be arranged to minimise the impact on the business.

27 Accident Pay

An Employee in receipt of weekly payments under the provisions of the *Worker Compensation Act 1987 NSW (WC Act)* will be entitled to receive Accident Pay from the Company subject to the following conditions and limitations.

27.1 **Entitlement Period**

The Company will pay Accident Pay during the incapacity of the Employee, within the meaning of the WC Act:

27.1.1 until such incapacity ceases; or

27.1.2 until the expiration of a period of 78 weeks from the date of injury,

27.1.3 whichever event first occurs, even if the Company terminates the Employee's employment within the period.

27.2 **Calculation of Period**

The 78 week period commences from the first day of incapacity for work, which may be subsequent to the date of injury. Intermittent absences arising from the one injury are to be cumulative in the assessment of the 78 week limitation.

27.3 **Payment and associated conditions**

27.3.1 Payment for Accident Pay will be in accordance with Appendix 3 – Payment Rules and the following conditions:

- a) the Employee agrees to submit to regular examinations by the Company nominated doctor;
- b) the Employee agrees to undertake rehabilitation as determined by the Employee's nominated treating doctor, where the doctor has been able to take into account information from the Company about available rehabilitation duties;
- c) Employees agree to undertake rehabilitation during weekday dayshift hours, regardless of the usual shift of the Employee if required by the Company.

27.3.2 In respect of incapacity for part of a week, the amount payable to the Employee as Accident Pay will be a direct pro rata payment.

27.4 **When Not Entitled**

The Employee is not entitled to any payment under this clause for any period of paid Annual Leave, Long Service Leave, Personal/Carer's Leave or for any paid Public Holiday.

27.5 **Redemption**

In the event that the Employee receives a lump sum in redemption of weekly payments under the WC Act, the liability of the Company to pay Accident Pay will cease from the date of the redemption.

27.6 **Damages Independent from the WC Act**

Where the Employee recovers damages from the Company or from a third party in respect of the injury independently of the WC Act, the Employee will be liable to repay to the Company the amount of Accident Pay which the Company has paid under this clause, and the Employee will not be entitled to any further Accident Pay.

28 Disputes Resolution Process

28.1 In the event of a dispute about matters arising within this Agreement or in relation to the National Employment Standards, except in relation to disputes concerning Parental Leave in relation to the refusal of a request for flexible working arrangements or extension under sections 65(5) and 76(4) of the FW Act, then the process as outlined below will be followed.

28.2 During the issue resolution process work will continue as directed by the Company providing that those directions are safe and legal.

28.3 The process to resolve issues under this clause is as follows:


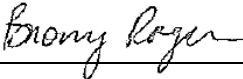
28.3.1 Firstly, the Employee should try to resolve the issue at the start, by thorough discussions between the Employee and their Supervisor; if unresolved, then



- 28.3.2 The Employee, and if the Employee so chooses, an Employee representative, and their immediate supervisor should take it to the next level of Company Officer (e.g. Superintendent) and try and work it out; if unresolved, then
 - 28.3.3 The Employee may refer the issue to the General Manager and, if the Employee so chooses, an Employee representative; if unresolved, then
 - 28.3.4 The Employee or, if the Employee chooses, an Employee representative may refer the issue to FWC for conciliation; if conciliation is unsuccessful, then
 - 28.3.5 Provided no unlawful industrial action has been taken in relation to the issue and that all the above Steps have been exhausted, and provided no such unlawful industrial action is threatened, impending or probable, FWC may arbitrate in relation to the issue but only in so far as it concerns the application of this Agreement.
- 28.4 For the purpose of making conciliation and arbitration under this clause effective, FWC shall conduct such conciliation and arbitration in accordance with the provisions of ss585 to 595 of the FW Act. When conciliating under this clause, FWC can dismiss the matter or issue a statement or recommendation. When arbitrating under this clause, FWC can dismiss the matter.
- 28.5 During any conciliation or arbitration proceedings before FWC under this clause, either party may choose to be represented by a legal practitioner.
- 28.6 If FWC issues a decision in writing under this clause, the decision and reasons for the decision will be provided in writing to the parties.
- 28.7 Where the FWC issues a decision in writing under this clause, it shall be binding on the parties and persons bound by this Agreement in accordance with its terms.

29 Workforce Representatives

- 29.1 Employees may choose an elected Workforce Representative to act on their behalf in regards to the application of this Agreement.
- 29.2 Workforce Representatives will be informed of the name and commencement date of new Employees. New Employees will be informed by the Company that there are Workforce Representatives. New Employees will be given the opportunity to meet with a Workforce Representative soon after the commencement of their employment.
- 29.3 Secure facilities for the storage of documents and a data communication point will be made available at locations as agreed between the Company and Workforce Representatives.
- 29.4 Workforce Representatives will be allowed leave offsite, paid in accordance with Appendix 3 – Payment Rules., exclusive of Company and Employee initiated proceedings before FWC or a Court, provided:
 - 29.4.1 At least 1 week (or a lesser period as agreed with the Company) written notice is provided; and
 - 29.4.2 Prior approval is given. Approval will not be unreasonably withheld; and
 - 29.4.3 Operations will not be adversely affected.
- 29.5 Where Employees request time to conduct an unpaid meeting, the General Manager must be advised prior to the meeting occurring. Meetings will be arranged so as to not interrupt the shift start (Employees dressed and with all equipment for normal place of work) or run into normal working time unless with prior approval of the General Manager.

30 Signatories

Signed for and on behalf of the Company:	
Authorised Officer Signature:	
Date:	19/03/201
Name in Full:	Craig Manz
Address:	PO Box 514, Unanderra NSW 2526
Position (Authority to Sign):	General Manager - Appin Colliery
Witness Signature:	
Date:	19/03/2019
Name in Full:	Briony Ragen
Address:	PO Box 514, Unanderra NSW 2526

Signed for and on behalf of the Employees:	
Authorised Officer Signature:	
Date:	15/03/2019
Name in Full:	Robert Timbs
Address:	636 Northcliffe Drive, Kembla Grange NSW 2526
Position (Authority to Sign):	District Vice President
Witness Signature:	
Date:	15/03/2019
Name in Full:	Amanda Brown
Address:	636 Northcliffe Drive, Kembla Grange NSW 2526

Appendix 1 – Rates of Pay & Allowances

1 Rates of Pay

Classification	Classification Definition	Rate per hour		
		First full pay period following the Commencement	First full pay period following the 12 month anniversary	First full pay period following the 24 month anniversary
Surface Operator/Surface Trades	An Employee employed to work in surface based roles only and who does not possess the skills and experience to undertake underground roles.	\$40.41	\$41.22	\$42.04
Underground Operator/Underground Trades	An Employee who holds the experience and skills to work in both surface and underground roles.	\$42.68	\$43.54	\$44.41
Specialist	An Employee, who in addition to being engaged in the operation and maintenance of mining equipment and infrastructure, must also be engaged in advanced technical roles of a kind not within the normal scope of work expected of and performed by an Operator or Trades Employee.	\$44.44	\$45.33	\$46.24

When determining the appropriate classification or rate of pay for an Employee, the provisions of clause 7.2 Operation of the classifications also apply.

2 Allowances

The following allowances are payable in addition to the base wage.

Allowance	Payment Rule	Rate per week		
		First full pay period following the Commencement	First full pay period following the 12 month anniversary	First full pay period following the 24 month anniversary
Occupational First Aid	Where an Employee is appointed as an Occupational First Aid Officer.	\$29.39	\$29.98	\$30.58
First Aid Attendant	Where an Employee is appointed as a first aid attendant.	\$16.15	\$16.47	\$16.80
Trades Allowance	An allowance payable to Underground and Surface Trades Employees.	\$65.21	\$66.51	\$67.84
Meal	In accordance with clause 14.4 Overtime Meals of this Agreement.	\$15.32	\$15.62	\$15.94

Appendix 2 – Recognition Payment

1 Recognition Payment Calculation

A recognition payment of \$20 will be paid for each Development Unit and Longwall operating during the week that reaches the weekly target set out below:

Process Area	Target
Longwall Retreat (each)	50m
Continuous Miner (per Miner regardless of panel set up)	120m

Once the weekly production goal is achieved no further payments are made for additional metres achieved for that Development Unit or Longwall.

For example; if during a week the Longwall in Area 9 achieves 58 metres retreat, and two Continuous Miners achieve 158m and 165m, the payment made to each Employee is \$60.00 plus \$500 totalling \$560.00 for that week.

Contracted stand-alone Development Units are included in payments under this system.

In circumstances where the Company decides to temporarily shut down the Colliery for 24 hours or more and this impacts the ability to achieve the planned weekly production targets, the Company will make an adjustment to the production targets for that week on a pro-rata basis.

2 Recognition Payment Review

If the Company invests in new production equipment or makes a decision which increases or decreases the production requirements of the Colliery, the weekly targets set out above may be adjusted, in consultation with Workforce Representatives and Employees, to reflect the new production requirements.

Appendix 3 – Payment Rules

Component	Payment Rule
Ordinary hours	Ordinary hours worked Monday to Friday inclusive are paid at the Employee's Classification rate.
	Ordinary hours worked on Saturday are paid at 1.5 times the Employee's Classification rate for the first 4 hours and 2 times thereafter.
	Ordinary hours worked on Sunday are paid at 2 times the Employee's Classification rate.
Rostered Overtime	All rostered overtime is paid at 2 times the Employee's Classification rate.
Non Rostered Overtime weekday roster Employees	Non rostered overtime worked Monday to Saturday inclusive is paid at 1.5 times the Employee's Classification rate for the first 3 hours and 2 times thereafter.
	Non rostered overtime worked on Sunday is paid at 2 times the Employee's Classification rate.
Non-rostered overtime for Employees who work a weekend roster or a roster incorporating Saturday and Sunday	All non-rostered overtime is paid at 2 times the Employee's Classification rate.
Afternoon Shift Allowance	15% for ordinary hours at the Employee's Classification rate.
Night Shift Allowance	25% for ordinary hours at the Employee's Classification rate.
Casual Loading	25% for hours worked at the Employee's Classification rate.
No 10 Hour Break between work on successive days	Where an Employee works overtime, other than rostered overtime, and is required to have a 10 hour break between the end of that overtime and the start of the Employee's ordinary hours of work on the next day there will be no loss of pay for ordinary hours of work which occur during this absence.
	Where the Company instructs an Employee to resume work, not having had 10 consecutive hours off work, the Employee will be paid at 2 times the Classification rate during ordinary hours and thereafter until the Employee finishes work.
Public Holidays	An Employee who is not required to work during a Public Holiday will be paid for that Public Holiday at their Classification rate per hour for their normal rostered hours which fall during that Public Holiday.
	An Employee required to work during a Public Holiday will be paid 2 times the Classification rate for the hours worked up to the hours calculated above in addition to the payment

Component	Payment Rule
	provided in above. For hours worked in excess of the above, an Employee will be paid 3 times the Classification rate.
	An Employee who is not rostered to work during a Public Holiday shall be paid 7 hours at their Classification rate.
Annual Leave	Paid the greater of as if at work excluding any shift allowance; or the Employee's Classification rate plus 20% leave loading for hours deducted.
Long Service Leave	For each week of leave paid 1 Ordinary weeks pay, the weekly Bonus and applicable Allowances as defined by the payment rule in Appendix 1 – Rates of Pay & Allowances, Table 2.
Personal/Carer's Leave	Paid the hours the Employee would have worked at the Employee's Classification rate and applicable Allowances as defined by the payment rule in Appendix 1 – Rates of Pay & Allowances, Table 2.
Parental Leave	Paid what the Employee would have been paid if they had been on Personal/Carers Leave.
Compassionate Leave	Paid what the Employee would have received if they had attended work.
Community Services Leave	Paid what the Employee would have received if they had attended work less any amount received from the Court or the Service.
Mines Rescue Training, Medical Examination, Annual One Day Refresher at SMRS	Where an Employee is to attend during a rostered shift they will be paid what the Employee would have received if they had attended work. If an Employee attends outside of a rostered shift then they will be paid the hours attended at the Overtime rate.
Accident Pay - 1st 39 weeks from date of injury, clause 27.3 conditions met	A weekly payment representing the difference between the weekly amounts of compensation paid to the Employee by the WC Act and what the Employee would have received if they had attended work in accordance with clause 27.
Accident Pay - 1st 39 weeks from date of injury, clause 27.3 conditions not met	A weekly payment representing the difference between the weekly amounts of compensation paid to the Employee by the WC Act and the Employee's Ordinary weeks' pay and the Weekly Bonus.
Accident Pay - 2nd 39 weeks	A weekly payment representing the difference between the weekly amounts of compensation paid to the Employee by the WC Act and the Employee's Ordinary weeks' pay.
Employee Rehabilitation	An Employee at work on rehabilitation following a work related injury will be paid what they would have received as if they had attended work on the shift they were working when the injury occurred.

Component	Payment Rule
Workforce Representative approved absence from work up to 35 person days	Bonus only, provided that the Absence Request Form indicates the number of days that have already been paid in the year under this clause.
Workforce Representative approved absence from work after 35 person days, or if the days taken number is not indicated on the Absence Request Form	Unpaid
Workforce Representative attendance at Company agreed meeting during rostered shift	Paid what the Employee would have received if they had attended work.
Workforce Representative attendance at Company agreed meeting outside of rostered shift	Paid for the duration of the meeting at the non- rostered Overtime rate.
Employee meetings	Paid 1 hour at the Employee's Classification Rate, to a maximum of 4 meetings per year. A signed attendance sheet to be provided.

Appendix 4 – Payments on Termination

Entitlement/ Form of Leave or Absence	Termination Payments					
	Fixed Term	Resignation	Retirement	Death, Ill Health	Dismissal	Retrenchment
Personal/ Carer's Leave	No pay	Paid at Employee's hourly Classification rate plus Average Bonus for hours accrued provided the Employee has 70 or more hours accrued	Paid at Employee's hourly Classification rate plus Average Bonus for hours accrued provided the Employee has 70 or more hours accrued	Paid at Employee's hourly Classification rate plus Average Bonus for hours accrued provided the Employee has 70 or more hours accrued	No pay	Paid at Employee's hourly Classification rate plus Average Bonus for hours accrued provided the Employee has 70 or more hours accrued
Annual Leave*	1. Ordinary weeks pay plus Average Bonus, or 2. The amount that would have been payable to the Employee had the Employee taken that period of leave plus Average Bonus	1. Ordinary weeks pay plus Average Bonus, or 2. The amount that would have been payable to the Employee had the Employee taken that period of leave plus Average Bonus	1. Ordinary weeks pay plus Average Bonus, or 2. The amount that would have been payable to the Employee had the Employee taken that period of leave plus Average Bonus	1. Ordinary weeks pay plus Average Bonus, or 2. The amount that would have been payable to the Employee had the Employee taken that period of leave plus Average Bonus	1. Ordinary weeks pay plus Average Bonus, or 2. The amount that would have been payable to the Employee had the Employee taken that period of leave plus Average Bonus	1. Ordinary weeks pay plus Average Bonus, or 2. The amount that would have been payable to the Employee had the Employee taken that period of leave plus Average Bonus
Long Service Leave	Paid ordinary weeks pay plus Average Bonus where Employee has 8 years' service (13 weeks entitlement)	Paid ordinary weeks pay plus Average Bonus where Employee has 8 years' service (13 weeks entitlement)	Paid ordinary weeks pay plus Average Bonus where Employee has 8 years' service (13 weeks entitlement)	Paid ordinary weeks pay plus Average Bonus for any Long Service Leave accumulated and not already taken	Paid ordinary weeks pay plus Average Bonus where Employee has 8 years' service (13 weeks entitlement)	Paid accumulated leave at ordinary weeks pay plus Average Bonus where Employee has more than 6 years' service
Redundancy Pay	Not payable if employment ends at expiry of term.	N/A	N/A	N/A	N/A	3 ordinary weeks pay per completed year of employment. Minimum of 3 weeks' pay

* If the NES of the *FW Act 2009* allows for the first payment, that will be the payment that will apply.

Appendix 5 – West Cliff CPP

1 Definitions

EA 2018 means the Agreement covering Employees at Appin Colliery and the CPP, and is the Agreement that this document is an Appendix of.

2 Application

This Appendix relates to employment arrangements for the CPP and CPP Employees only. The provisions of this Appendix take precedence over any provision in the body of EA 2018 dealing with the same matter. Where this Appendix does not deal with a matter, then the provisions of the balance of EA 2018 apply.

3 Introduction of major change

It is agreed that some decisions will only apply to the CPP. In that event, the Company will consult with affected Employees and their Workforce Representatives.

4 Types of employment

The provisions of EA 2018 apply to this matter.

4.1 *Secondments into Different Positions*

4.1.1 Employees covered by this Appendix may be seconded to temporarily fill positions that are not covered within this Appendix. Secondments will only occur following agreement being reached between the Company and the Employee concerned.

4.1.2 Secondments will not be undertaken with the intention of reducing manning on a crew. Team Leader positions are not required to be filled by a secondment. The provisions of clause 7.3 of the main body of EA 2018 apply to the work of remaining crew members.

4.1.3 Employees seconded to such roles will be paid a Higher Duties Allowance as set out in Appendix 1 – Rates of Pay & Allowances and additional payment for the roster to be worked if required.

4.1.4 This appointment will be made in writing by the relevant Superintendent.

5 Hours of work

5.1 *Rosters*

The terms of clause 6 of the main body of EA 2018 apply. The 12 hour 7 day roster is an agreed roster under EA 2018.

5.2 *Working Arrangements*

5.2.1 12 hour, 7 day

a) For Employees working the 12 hour, 7 day roster, the following changes to work arrangements are agreed:

1. Day 12 hour roster Employees' shift starting times will be 7.00am and 7.00pm for day shift and night shift respectively;

The shift will include a 15 minute shower period before the end of the shift.

5.3 Working Arrangements – Reduced Employee Resourcing

In the event of being unable to secure coverage for absence replacement (after exhausting all avenues) then the crew will work below nominated employee resourcing levels to carry-out normal duties to the best of their abilities. The provisions of the Guidelines for Reduced Employee Resourcing from Risk Assessment WCPRA0150 will be implemented to determine appropriate duties to be undertaken by the crew.

6 Public Holidays

The Public Holidays are as set out in the main body of EA 2018.

6.1 Provision of Labour on Public Holidays

6.1.1 Employees will provide coverage 24 hours per day on Public Holidays if required.

6.1.2 Subject to the NES, resourcing requirements on Public Holidays at the CPP will be all 12 hour, 7 day roster Employees to attend for work.

6.2 Christmas Day and Boxing Day (December 25th & 26th each year) & other Public Holidays where operation is not required

6.2.1 Where Christmas Day and/or Boxing Day is a non-production day, Employees will not be required attend work on those days. Where other days are also declared non-production days and there is no operational requirement to wash coal, then Employees will not be required to attend for work.

6.2.2 Coverage for exceptional or emergency circumstances will be provided in addition to the above.

7 Annual Leave

7.1 Accrual

Annual Leave accrual for the 12 hour, 7 day roster is:

Roster Cycle	Weekly Accrual (hours)	Annual Entitlement (weeks)
7 Day Roster (12 hour shifts)	4.0385	6

Other Annual Leave provisions are contained in EA 2018.

7.2 Taking Leave

Leave will be allowed at the time requested unless the operations, in the opinion of the Company, be adversely affected. For 12 hour, 7 day roster employees, ordinarily 1 employee per crew will be allowed to take leave at any time. Additional leave for short periods (1 or 2 shifts only) may be taken by another crew member in exceptional circumstances with permission from the Production Superintendent. Employees may arrange to swap shifts to cover an absence.

7.3 Deduction from Accrual

7.3.1 An Employee working the 12 hours, 8 week roster cycle the deduction is designed to allow for 6 weeks Annual Leave to be taken and therefore deduction calculation is as follows:

- a) 6 weeks at 35 hours. This equals 210 hours.

- b) The 6 weeks entitlement equates to 22 shifts per year regardless of when that leave commences in the roster cycle.
- c) The deduction is 210 hours divided by 22 shifts. This equates to 9.55 hours per day.

7.4 Shutdowns

It is agreed that the provisions of clause 16.4 of the main body of EA2018 can be applied at the CPP only.

7.5 Payment

Payment for Annual Leave will be in accordance with EA 2018 Appendix 3 – Payment Rules or Appendix 6 – Payment Rules

8 Personal/Carer’s Leave

Personal/Carer’s Leave is defined in EA 2018.

8.1 Accrual

Employees on the 12 hour, 7 day roster will accrue Personal/Carer’s Leave on the following basis:

Roster Cycle	Hours Accrued Each Week	Equivalent Annual Accrual Hours
7 Day Roster (12 hour shifts)	2.0770	108

8.2 Deduction of Accrued Leave

For Employees on the 12 hour 7 day roster, hours will be deducted from the Employee’s accrual on the following basis:

Roster Cycle (days/hours)	Deduction from Accrual (hours)
7 day roster, 12 hours (8 week cycle)	10 (280/28)

8.3 Payment

Payment for Personal/Carers Leave will be in accordance with EA 2018 Appendix 3 – Payment Rules or Appendix 6 – Payment Rules.

9 Termination of employment

The provisions of EA 2018 concerning Employment Security and Termination of Employment apply at the CPP. It is agreed that these provisions may be applied at the CPP only.

Section 1 – Rates of Pay and Allowances

Table 1 Classification Rate

Classification	Rate per hour		
	First full pay period following the Commencement of Agreement	First full pay period following the Anniversary	First full pay period following the Anniversary
Operator – CHPP	\$40.41	\$41.22	\$42.04
Trades – CHPP	\$41.11	\$41.93	\$42.77
Trades – Leading Hand and Electronic	\$45.24	\$46.14	\$47.06

Table 2 - Allowances

The Allowances set out in Appendix 1 – Rates of Pay & Allowances of EA 2018 will apply to Employees at the CPP, except where noted below. These allowances are in addition to or in lieu of the stated allowances:

Allowances	Payment Rule	First full pay period following the Commencement of Agreement	First full pay period following the Anniversary	First full pay period following the Anniversary
Tool Allowance	An allowance payable weekly to all Trades Employees at the CHPP. Applies in lieu of the Trades Allowance in EA 2018.	\$11.39	\$11.61	\$11.84
Shift Organisation Allowance	An allowance payable weekly to those Employees conducting shift organisation over a full week period or greater. This allowance will only be paid when appointed by the Company.	\$113.85	\$116.13	\$118.45
CHPP Continuous Wash Payment	A payment will be made for up to 2 Employees per shift in the CHPP, provided that they maintain continuous CHPP production through change of shift and for working flexible crib arrangements.	\$59.00	\$60.17	\$61.38
Higher Duties	An Employee seconded into the Production Team Leader position, in accordance with clause 4.14.1 of this Schedule, paid per shift of secondment.	\$115.25	\$117.55	\$119.90

Section 2 – 12 Hour, 7 day, 8 week Roster Cycle

The 12 hour shift, 7 day roster consists of four crews of Employees, with two crews on Dayshift and two crews on Night shift. Each crew works a repeating pattern of 4 days at work followed by 4 days off work. The roster repeats after every 8 weeks.

Section 3 – 12 Hour, 7 day, Roster

Method of Payment

The method of payment is an average wage. The average daily payment rate is calculated so that all rostered days are paid the same dollar value to simplify the daily payment for Employees. The average rate pays exactly the same amount of money to an Employee over the roster cycle as the projected roster payment method.

The daily average rate is determined by summing the payment for each individual shift in the roster. The total payment for the roster cycle is divided by the total number of shifts in the cycle. The following rates will be applied:

Classification	Rate per hour		
	First full pay period following the Commencement of Agreement	First full pay period following the Anniversary	First full pay period following the Anniversary
CHPP Operator – Day Shift (8 Week)	\$59.76	\$60.96	\$62.18
CHPP Operator – Night Shift (8 Week)	\$68.55	\$69.92	\$71.32
CHPP Trades – Day Shift (8 Week)	\$60.78	\$62.00	\$63.24
CHPP Trades – Night Shift (8 Week)	\$69.75	\$71.15	\$72.57

Appendix 6 – Payment Rules

Component	Payment Rule
<p>Public Holidays (12 Hour, 7 Day Employees) (Not applicable to Casual Employees)</p>	<p>An Employee who is rostered to work on a Public Holiday will be paid their average rate per hour for the total Ordinary hours in the roster cycle divided by the number of rostered shifts in the roster cycle.</p> <p>When a Public Holiday falls on an Employee's rostered day off the Employee will be paid their Classification rate per hour for the total Ordinary hours in the roster cycle divided by the number of rostered shifts in the roster cycle.</p> <p>An Employee who works on a Public Holiday will be paid 2 times the Classification rate for the hours worked up to the hours calculated above in addition to the payment provided in above.</p> <p>For hours worked in excess of above an Employee will be paid 3 times the Classification rate.</p>
<p>Parental Leave (12 Hour, 7 Day Employees)</p>	<p>Paid 12 hours at the average wage rate for each day of leave taken.</p>
<p>Personal/Carer's Leave (12 Hour, 7 Day Employees)</p>	<p>Paid 12 hours at the average wage rate for each day of leave taken.</p>
<p>Annual Leave (12 Hour, 7 Day Employees)</p>	<p>Paid 12 hours at the average wage rate for each day of leave taken.</p>

Schedule 2.3—Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
 - (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

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- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
 - (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
 - (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace; or
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (12) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;
 the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
 - (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and

- (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
relevant employees means the employees who may be affected by a change referred to in subclause (1).