



DECISION

Fair Work Act 2009
s.225—Enterprise agreement

Tesa Mining (QLD) Pty Ltd
(AG2018/5206)

TESA GROUP - ENTERPRISE AGREEMENT 2012

Coal industry

SENIOR DEPUTY PRESIDENT HAMBERGER

SYDNEY, 26 SEPTEMBER 2018

Termination of the TESA Group - Enterprise Agreement 2012.

[1] On 14 September 2018, Tesa Mining (QLD) Pty Ltd applied for the termination of the *TESA Group - Enterprise Agreement 2012*.

[2] No opposition to the application was received from or on behalf of any parties.

[3] Pursuant to s.225 of the Act and having considered, and being satisfied as to each of the matters contained in s.226 of the Act, the Agreement is terminated.

[4] The termination will come into effect from the date of this decision.



SENIOR DEPUTY PRESIDENT

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DECISION

Fair Work Act 2009

s.210 - Application for approval of a variation of an enterprise agreement

Tesa Group Pty Ltd
(AG2014/10703)

TESA GROUP - ENTERPRISE AGREEMENT 2012

Coal industry

SENIOR DEPUTY PRESIDENT HAMBERGER

SYDNEY, 18 DECEMBER 2014

Application for variation of the TESA Group - Enterprise Agreement 2012.

A. This Agreement is varied as follows:

1. Delete subclause 11.2 and insert:

11.2 Wages

The rates below are the minimum weekly/hourly rates which will be paid to all permanent employees. Casual employees will be paid the minimum hourly rate plus a 25% casual loading.

| | <u>From the date of approval by Fair Work Australia Hourly Rates.</u> | <u>From the date of approval by Fair Work Australia Hourly Rates.</u> |
|--------------------|---|---|
| | <u>UNDERGROUND MINE</u> | <u>OPEN CUT MINE</u> |
| Mineworker Level 1 | \$27.94 | \$20.77 |
| Mineworker Level 2 | \$29.94 | \$22.05 |
| Mineworker Level 3 | \$31.37 | \$23.10 |
| Mineworker Level 4 | \$34.59 | \$25.46 |

11.2 a) Pay increases

On the first full pay period on or after 1st December 2014, employees shall receive a pay increase calculated on the basis of 1% of the rate prescribed in the table above in accordance with their classification.

On the first full pay period on or after 1st December 2015, employees shall receive a pay increase calculated on the basis of 3% of the rate prescribed in the table above in accordance with their classification.

- 11.2 b) The rates above are inclusive of all award allowances except where otherwise indicated in the Agreement.

A \$2.00 per hour "Tool Allowance for a Tradesperson" will be paid (for all hours worked) in addition to the above wage rates.

- 11.2 c) Wages in this agreement shall not be permitted to fall below the minimum wages in the Black Coal Mining Modern Award as varied from time to time.
- 11.2 d) TESA shall also conduct a review of the wage increases every June and December of each year with the view of enhancing the prescribed increases, based on market trading conditions. TESA shall consult with employees each time a review occurs.
- 11.2.1 The Company may at its discretion pay higher rates and allowances where this is negotiated with the Client. These will be advised to the employee in writing at the time of engagement at each site.
- 11.2.2 Except by agreement all wages are to be paid by electronic funds transfer on a weekly basis. Employees may nominate the account(s) into which funds and deductions are to be transferred. The Company will make every effort to address any concerns that employees may have if the payment of their wages is delayed.
- 11.2.3 Upon termination of employment wages due to an employee are to be paid on the day of such termination or forwarded by electronic funds transfer or posted to the employee's last known address within seventy two (72) hours.
- 11.2.4 When an employee is moved by the Employer from his/her existing Classification Level to the next level, or to an alternate work / client site the employer will notify the employee of this change in writing with a new "Summary of Entitlement".

2. Delete existing subclause 11.8 a) and insert:

- a) Re Induction

Employees that are required to complete re-inductions (site specific) for the purpose of continuation of engagement at that client site will be paid a payment of \$210 per occasion, when this occurs outside of rostered hours. Re-induction payment does not apply to employees that choose to cease engagement at one client site and commence elsewhere. Applicable inductions in this case will not be paid for attendance.

3. Delete subclause 11.9 and insert:

11.9 Safety Talk Payments

A standard payment of \$9.45 will be paid to each employee for attendance at mandatory safety talks. Safety talks are contained to a limit of 15 minutes in duration.

B. Pursuant to the terms of the varied agreement, this order shall operate from 18 December 2014 and shall remain in force until the Agreement is replaced or terminated.



SENIOR DEPUTY PRESIDENT

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FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009
s.185—Enterprise agreement

TESA Group Pty Ltd
(AG2012/13326)

TESA GROUP - ENTERPRISE AGREEMENT 2012

Coal industry

COMMISSIONER ROBERTS

SYDNEY, 30 NOVEMBER 2012

Application for approval of the TESA Group - Enterprise Agreement 2012.

[1] An application has been made for approval of an enterprise agreement known as the *TESA Group - Enterprise Agreement 2012* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act) by TESA Group Pty Ltd. The Agreement is a single-enterprise agreement.

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

[3] The Construction, Forestry, Mining and Energy Union, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wishes to be covered by the Agreement. In accordance with s.201(2) of the Act, I note that the Agreement covers that organisation.

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 December 2012. The nominal expiry date will be 9 November 2016.



COMMISSIONER

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**Construction, Forestry, Mining and Energy
Union
(Mining & Energy Division)**

and

TESA Group

TESA GROUP

**ENTERPRISE
AGREEMENT
2012**

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PART 1 APPLICATION AND OPERATION

1. Title

This Agreement is to be known as the:

TESA GROUP - Enterprise Agreement 2012

2. Parties to the Agreement

The parties to the Agreement are:

TESA Group Pty Ltd (ABN 43 107 606 833)

TESA Mining (NSW) Pty Ltd (ABN 76 111 753 792)

TESA Mining (Qld) Pty Ltd (ABN 87 111 753 836) ABN: 111 753 836)

TESA Mining (Underground) Pty Ltd (ABN 52 105 416 180)

(hereinafter referred to as "the Company")

and

All employees of the Company engaged in one of the classification as contained in Clause 11.1 of this Agreement whose employment is, at any time when the Agreement is in operation, subject to this Agreement.

and

Subject to application pursuant to Section 183 of the Fair Work Act 2009 ["FW Act"] the Construction, Forestry, Mining and Energy Union (Mining & Energy Division)

(hereinafter referred to as "the Union")

This Agreement is binding on all of the above parties.

3. Incidence and Application

3.1 This Agreement is an Enterprise Agreement made in accordance with Part 2-4 of the Fair Work Act 2009 (the Act).

3.2 Subject to clause 3.3, this Agreement applies to the Union and the Company, and employees of the Company employed in the classifications contained in clause 10.1 of this Agreement in respect of production and

engineering work performed at the Company's coal mining clients' premises, within the state of Queensland and in the region covered by the Northern District Coal Fields of New South Wales.

This Agreement does not apply to staff.

- 3.3** To the extent that any previous industrial instrument applied to the parties (including the TESA Group Pty Ltd Certified Agreement 2005), this agreement supersedes and wholly replaces any agreement with respect to work performed within the regions identified in Clause 3.2 of this Agreement..

4. Duration

This Agreement will come into operation seven days from the date of approval by Fair Work Australia ["FWA"] and shall have a nominal expiry date of 09 November 2016

5. Incorporation of Award Terms and National Employment Standards

This Agreement incorporates the National Employment Standards (NES) and the specified terms of the Black Coal Mining Industry Award 2010, provided that where there is any inconsistency between the express terms of the Agreement, the NES and the incorporated terms of the Award, the NES shall prevail to the extent of the inconsistency. Where there is any inconsistency between the Agreement's terms and any incorporated Award term, the Agreement terms shall prevail. In this Agreement references to the Award shall mean the Award as incorporated into this Agreement unless the context requires otherwise.

6. Purpose and Intention

The Company is a workplace services provider to the mining industry. Employees are engaged to work at sites operated by clients of the Company. The Company operates in a very competitive and challenging economic environment. To ensure the ongoing prosperity of the Company and therefore the welfare of the employees the parties acknowledge that it is imperative that employees can work in a highly flexible and responsive way taking into account fairness and adequate remuneration.

7.. No Extra Claims

It is a condition of this Agreement that the parties undertake not to pursue any extra claims for the duration of this Agreement except where permitted by the terms of this Agreement.

PART 2 TYPES OF EMPLOYMENT AND TERMINATION OF EMPLOYMENT

8. Contract of Employment

8.1 Employee Duties

Employees must perform such tasks as the Company may reasonably require, subject to the employee being skilled, competent, trained and authorised to do so. Where an employee does not perform the required work in accordance with this provision, the employee is not entitled to payment for that period.

The Company must ensure that employees are adequately trained and must not allocate tasks in a manner which promotes deskilling. Accordingly, the Company will ensure that employees will have sufficient opportunity to maintain and develop their skills for purposes of safety, certification and licensing retention.

8.2 Permanent Employment

A permanent full time employee is an employee who has been engaged by the week to work an average of 35 ordinary hours per week over a roster cycle.

A permanent part time employee is an employee who works less than 35 hours per week and has reasonably predictable hours of work and receives, on a pro rata basis, equivalent pay and conditions to those of full time employees who do the same kind of work.

The first six (6) months of employment of a new employee shall be on a probationary basis during which time employment may be terminated by the giving of one week's notice or by the forfeiture of one week's pay.

8.3 Casual Employment

Casual employees may be engaged, for a minimum period of one shift, on an hourly basis and shall be paid for working ordinary time at a rate per hour of one thirty fifth of the appropriate weekly rate outlined in Clause 11.2 plus an additional twenty five per cent (25%) loading which is paid in lieu of all and any other benefits (unless otherwise specified) contained in this Agreement.

Overtime shall be paid at the appropriate penalty rate without the additional casual loading.

The payment of this 25% casual loading is in lieu of all forms of paid leave except long service leave or unpaid carers and parental leave in the case of eligible casuals pursuant to the National Employment Standards, and coal industry superannuation which will be contributed to the industry fund by the Company.

Casual employees may be stood down without pay subject to two hours' notice when access to a site/project is prohibited by management.

Casual employees will be paid 2 hours pay if they are notified of a stand down less than two hours prior to the commencement of the shift. Employees will be paid 4 hours pay if the shift is cancelled upon the commencement of the shift or for the hours worked whichever is the greater.

8.4 Casual Conversion

A casual employee who has six(6) months continuous service with the company that is equal to or greater than the ordinary hours of work (35 per week) shall have the right, subject to a satisfactory service record, to be converted from a casual employee to a permanent employee. An employee will have the right to remain a casual employee if they so choose.

Any disagreement as to the operation of this clause shall be dealt with in accordance with clause 28 Disputes Procedure of this agreement.

8.5 Fixed Term Employment

It is recognised between the parties that the Company performs work of a specific nature and to recognise the intermittent nature and the need to work this type of work the following Agreement shall apply for coverage of this specific work for the agreed period.

Fixed term employees may be engaged under the terms of this Agreement.

Fixed term employees shall receive a pro rata of accrued entitlements to reflect the defined period of employment of each engagement and shall be entitled to be paid for all untaken leave at the end of each term unless otherwise agreed between the Company and employee.

9. Termination of Employment

An employee must give at least 1 weeks' notice to the company of their intention to terminate their employment.

The Company must not terminate an employee's employment unless the employee has been given either a period of notice as outlined below or payment in lieu of notice.

Required period of notice:-

Permanent and Fixed Term:

| Employees' period of continuous service with the Company | Period of Notice |
|--|------------------|
| Not more than one year: | 1 week |
| More than one year but less than three years: | 2 weeks |
| More than three years but less than five years: | 3 weeks |
| More than five years | 4 weeks |

The period of notice is increased by one week if the employee is over 45 years of age and has completed at least two years continuous service with the Company.

The required amount of compensation instead of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period.

The total must be worked out on the basis of:

- (i) the employee's ordinary hours of work (even if they are not standard hours); and
- (ii) the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and
- (iii) any other amounts payable under the employee's contract of employment.

This clause shall not apply to casual or fixed term employees.

10. Redundancy

Permanent employees retrenched by the Company will receive four (4) weeks' notice of impending retrenchment (or 5 weeks if required by the National Employment Standards) and a minimum of three (3) weeks' pay (as per the classification in clause 11.2 per year of service as retrenchment pay for each completed year of service at the Company).

Regardless of length of employment, the minimum payment due to employees under the above clause is two ordinary weeks' pay as outlined in Clause 10.2.

Accrued sick leave at the time of retrenchment will be paid out at the appropriate classification rate as outlined in clause 11.2.

Accrued annual leave at the time of retrenchment will be paid out at the employee's appropriate classification rate in clause 11.2. This will be paid as if the employee had taken such leave.

Should there be a requirement to reduce manning levels voluntary redundancy arrangements will be offered at first instance. The Company will have the right to refuse any voluntary redundancy should the skills and experience of the employee/s concerned need to be retained.

This clause does not apply to casual or fixed term employees.

PART 3 WAGES, RELATED MATTERS AND SUPERANNUATION

11 Classifications and Wage Rates

11.1 Classifications

Mineworker Level 1

A Mineworker Level 1 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 Level 2.

A Mineworker Level 1 employees is best described as a "cleanskin or inexperienced Mine Worker

Mineworker Level 2

A Mineworker Level 2 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 Level 3.

A Mineworker Level 2 employee is best described as an inexperienced tradesperson (less that 12 months Coal Mining Industry Experience)

Mineworker Level 3

A Mineworker Level 3 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 Level 2.

A Mineworker Level 3 may be required to supervise the work of other employees.

A Mineworker Level 3 employees is best described as an Experienced Mineworker or Tradesperson (greater than 12 months Coal Mining Industry Experience) and determined competent to work alone.

Mineworker Level 4

A Mineworker Level 4 is an employee assessed by the employer as competent to perform specialised functions beyond the level of a Mineworker Level 3. 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.

The performance of this role may require the employee to supervise the work of other employees.

A Mineworker Level 4 employee can be a Leading Hand Tradesperson, underground Deputy or Open Cut Examiner

11.2 Wages

The rates below are the minimum weekly/hourly rates which will be paid to all permanent employees. Casual employees will be paid the minimum hourly rate plus a 25% casual loading.

| | From the date of approval by Fair Work Australia Hourly Rates. UNDERGROUND MINE | From the date of approval by Fair Work Australia Hourly Rates. OPEN CUT MINE |
|--------------------|---|--|
| Mineworker Level 1 | \$27.94 | \$19.60 |
| Mineworker Level 2 | \$29.94 | \$21.00 |
| Mineworker Level 3 | \$31.37 | \$22.00 |
| Mineworker Level 4 | \$34.59 | \$24.25 |

The rates above will be increased by 5% on each annual anniversary during the term of this Agreement.

The rates above are inclusive of all award allowances except where otherwise indicated in the Agreement.

A \$2.00 per hour "Tool Allowance for a Tradesperson" will be paid (for all hours worked) in addition to the above wage rates. This Tool Allowance will be increased by 5% on each annual anniversary during the term of this agreement.

For the avoidance of doubt, nothing in this Agreement shall operate to reduce any of the terms and conditions of employment applying to Employees at the site where they work, immediately prior to the coming into operation of this Agreement.

Wages in this agreement shall not be permitted to fall below the minimum wages in the Black Coal Mining Modern Award as varied from time to time.

11.2.1 The Company may at its discretion pay higher rates and allowances where this is negotiated with the Client. These will be advised to the employee in writing at the time of engagement at each site.

11.2.2 Except by agreement all wages are to be paid by electronic funds transfer on a weekly basis. Employees may nominate the account(s) into which funds and deductions are to be transferred. The Company will make every effort to address any concerns that employees may have if the payment of their wages is delayed.

11.2.3 Upon termination of employment wages due to an employee are to be paid on the day of such termination or forwarded by electronic funds transfer or posted to the employee's last known address within seventy two (72) hours.

11.2.4 When an employee is moved by the Employer from his/her existing Classification Level to the next level, or to an alternate work / client site the employer will notify the employee of this change in writing with a new "Summary of Entitlement"

11.3 Implementation of Flat Payment Rates

The Company may calculate a combination of ordinary, shift, overtime rates and any applicable allowances from this Agreement as an "all up rate" to apply at a particular site provided:-

- (i) The Company and the effected employee agree on the introduction of an all up rate following consultation between the Company, effected employees and their Union.
- (ii) The all up rate is better off overall and results in no disadvantage to employees.

11.4 Flexibility Arrangements

11.4.1. Agreement flexibility

Notwithstanding any other provision of this Agreement, the Company and an individual employee may agree to vary the application of certain terms of this Agreement to meet the genuine individual needs of the Company and the individual employee. The terms that the Company and the individual employee may agree to vary the application of are those concerning:

- * arrangements for when work is performed;
- * overtime rates;
- * penalty rates;
- * allowances; and
- * leave loading

11.4.1.1 The Company and the individual employee must have genuinely made the flexibility agreement without coercion or duress.

11.4.1.2 The flexibility agreement between the Company and the individual employee must:

- a) be confined to a variation in the application of one or more of the terms listed in clause 11.4.1; and
- b) not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.

11.4.1.3 For the purposes of clause 11.4.1.2 (b) the flexibility agreements will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:

- a) the flexibility agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this Agreement; and
- b) the flexibility agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.

11.4.1.4 The flexibility agreement between the employer and the individual employee must also:

- a) be in writing, name the parties to the flexibility agreement and be signed by an authorised representative of The Company and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- b) state each term of this Agreement that the employer and the individual employee have agreed to vary;
- c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- d) detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
- e) state the date the flexibility agreement commences to operate.

11.4.1.5 The employer must give the individual employee a copy of the flexibility agreement and keep the flexibility agreement as a time and wages record.

An employer seeking to enter into a flexibility agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure that the employee understands the proposal.

The flexibility agreement may be terminated:

- a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the flexibility agreement ceasing to operate at the end of the notice period; or
- b) at any time, by written agreement between the employer and the individual employee.

The right to make a flexibility agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this Agreement.

11.5 Traineeships

The Company may employ trainees who are engaged to complete a nationally recognised traineeship program through the Company. Trainees will be engaged on a full time or part time basis under an indentureship arrangement..

The Company will pay trainees according to the table below.

| Trainee | From commencement of until attainment of Certificate II | From commencement of until attainment of Certificate III |
|---------|---|--|
| | 70% of Mineworker Level 1 | 90% of Mineworker Level 1 |

The Company may at its discretion pay an amount higher than this including an annualised salary if negotiated with the Client.

At the completion of the Trainees Nationally Recognised Traineeship, subject to the availability of ongoing work and subject to a satisfactory service record, the employee shall have the right to continue in Permanent Employment.

11.6 Bonus

11.6.1 Bonus – Open Cut Mine Operations

The Company may at its discretion pay a bonus to employees in addition to their remuneration where such a bonus is negotiated with the Client.

11.6.2 Bonus – Underground Mine Operations

a) NSW (Northern Districts Coal Fields)

The Company will pay Underground Mine Production Bonus in accordance with the relevant " District Regional Average Bonus" arrangements.

b) Qld

The Company will pay Underground Production Bonus for Qld Operations at the Average of the 3 NSW District Regional Bonuses

11.7 Protective Clothing and Equipment

Task specific safety equipment such as ear plugs, safety helmet and safety glasses will be provided on a needs basis at no cost to the employee and replaced on a fair wear and tear basis as determined by the Company.

Protective clothing shall be supplied to all employees upon commencement of employment to meet Industry Standards and as defined in the list below. Protective Clothing will be replaced on a fair wear and tear basis.

Supply upon commencement of employment:

- 3 pairs of full length Work Trousers
- 3 long sleeve Work Shirts
- 1 Pair of work boots
- 1 Wet Weather / Winter Jacket

11.8 Re-induction and Coal Board Medical - Payment

a) Re Induction

Employees that are required to complete re-inductions (site specific) for the purpose of continuation of engagement at that client site will be paid an payment of \$200 per occasion, (increasing by 5% on each anniversary date) when this occurs outside of rostered hours. Re-induction payment does not apply to employees that choose to cease engagement at one client site and commence elsewhere. Applicable inductions in this case will not be paid for attendance.

b) Coal Board Medical

The cost associated with the undertaking a "Coal Board Medical Examination" will be borne by the Company

11.9 Safety Talk Payments

A standard payment of \$9.00 (increasing by 5% on each anniversary date) will be paid to each employee for attendance at mandatory safety talks. Safety talks are contained to a limit of 15 minutes in duration.

11.10 Periodic Medical Payments

Employees participating in periodic medicals outside rostered hours will be paid for the time of attendance, with a minimum of 4 hours at their ordinary rate of pay applicable at the site (excluding pre-employment).

Periodic medicals are defined at Clause 5, Order 41 of the Coal Industry Act 2001.

11.11 Transport and Accommodation arrangements (Queensland ONLY)

Where the Employee is unable to return home due to working away from home he/she shall be afforded accommodation at the expense of the Company. Accommodation shall be organised by the Company where at all possible.

Accommodation in Queensland will be single camp style accommodation with adequate amenities and all meals provided. Accommodation and meals will be to a similar standard as that supplied to the client's Permanent Employees where at all possible. Where the Company is unable to supply accommodation of a similar standard to that of the client's Employees, Company Employees will be advised prior to the commencement of the situation. Any disputes in respect to this will be processed through the Disputes Resolution Procedure.

In Queensland, where Employees are required to travel long distances from their home and excess travel arrangements are in place on a particular mine site then the parties will have discussions regarding this issue.

12 Superannuation

12.1 This Clause applies to the exclusion of any obligation which the Company might otherwise have under any State statute, or any award or other industrial instrument or agreement.

From the Lodgement of this Agreement the Company will make superannuation contributions for each Employee at the greater of:

- (i) the current rate of 9% of ordinary time earnings (OTE); or
- (ii) a level so that the Company does not incur a charge under the Superannuation Guarantee Legislation.

12.2 For the purpose of the Superannuation Guarantee charge, the Company will make contributions into the AUSCOAL Superannuation Fund ("AUSCOAL").

12.2.1 For the purpose of sub-Clause 12.1 OTE will mean the total of the following:

- (i) Earnings in respect of the Employee's ordinary hours of work.
- (ii) earnings in respect of shift loadings and weekend penalty rates;
- (iii) earnings in respect of overtime that forms part of a roster pattern of work;
- (iv) earnings in respect of allowances which are not a reimbursement of expenses;
- (v) earnings in respect of casual loading;
- (vi) earnings in respect of Annual Leave, Long Service Leave and Personal / Carer's leave taken; and

(vii) earnings in respect of any Bonus

- 12.3** If the Company makes additional superannuation contributions for an Employee under salary sacrifice arrangements referred to below, the Company agrees that these contributions will not reduce the Company's obligations to make contributions under this Clause.
- 12.4** A "Mine Worker" (employee) engaged in or about a Queensland Coal Mine is required to make a statutory "after tax" contribution of \$17.50 per week to AUSCOAL Super. This weekly amount is based on 2.5% of the Black Coal Induction Level 2 Minimum Award rate of \$701 per week. This amount will continue to change where there are increases to the award rate and conform to Section 4 of the Coal and Oil Shale Mien Workers Superannuation Act 1989 (QLD).

13 **Salary Sacrifice**

- 13.1** 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 the Employee to the Employee's fund, under a salary sacrifice arrangement. This will result in a reduction in the cash remuneration received directly by the Employee.
- 13.2** These contributions can either be a percentage (%) of weekly gross earnings or a fixed dollar amount. If a fixed dollar amount is nominated, this will be in multiples of ten (10) dollars. It is the Employee's responsibility to ensure any salary sacrifice arrangement does not impact their ability to make all other nominated deductions.
- 13.3** If an Employee wishes to commence a salary sacrifice arrangement under this Clause, the Employee must notify the company in writing at least four (4) weeks prior to the commencement.
- 13.4** An Employee may vary or cease an existing salary sacrifice arrangement twice every financial year, or at such other times as the Company agrees. An Employee wishing to do so must provide the Company with at least four (4) weeks prior written notice.

PART 4 HOURS OF WORK AND RELATED MATTERS

14. Hours of Work

14.1 Ordinary Hours

The ordinary hours of work shall be an average of thirty-five (35) hours per week over an employee's roster cycle.

14.2 Rosters

Employees may be required to work rosters that cover 24 hours per day, 7 days per week in shift lengths up to 12 hours plus hot seat change. The working hours of the rosters will be consistent with those worked at the mine where the employee is engaged

From time to time, employees may be required to change between roster types and start and finish times and will be given as much notice as possible of any such change. If employees are required to permanently or regularly change the roster they work, this matter will be discussed with them, and they will be given seven (7) days' notice where practicable.

14.3 Meal Breaks

Employees will be entitled to receive the same paid meal breaks that apply to the roster being worked at the client's operation where the employee is engaged..

14.4 Rest Periods between shifts

Unless extraordinary circumstances exist, and taking into account clause 15.3 below, employees will have a break of at least ten consecutive hours between ceasing work on one rostered shift and the start of their next rostered shift.

14.5 Shift Allowances

Shift Allowances will be payable on afternoon shift and night shift at a rate consistent with the mine in which the work is performed provided that such rate is not less than the Black Coal Mining Industry Modern Award.

15 Overtime

15.1 Monday to Friday Employees

All time worked by Monday to Friday employees in excess of or outside the ordinary working hours of any shift will be paid for at the rate of:-

- (a) time and one half for the first three hours on any day; and
- (b) double time after that, which will continue until the overtime work is completed

Alternatively if the overtime provision for the employees of the mine site at which the employee engaged by this agreement is working is greater, then the greater provision will apply.

15.2 6 or 7 Day Roster Employees

All time worked by 6 or 7 day roster employees in excess of or outside the ordinary working hours will be paid for at the rate of double time.

15.3 Reasonable Overtime

It is expected that all employees be available to work reasonable overtime as defined in the national Employment Standards (NES). "

Subject to the provisions of the NES the following will apply::

- a) Where overtime work is necessary it will be organised so that employees have at least ten (10) hours off duty between work on successive days. If, on the instructions of the employer an employee resumes or continues work without having had ten consecutive hours off duty, the employee shall be paid at double time during ordinary hours until released from duty. The employee shall then be entitled to be absent for ten consecutive hours without loss of pay for ordinary hours of work occurring during such absence.

- b) If the period of follow on overtime the employee is required to work is more than 1.5 hours the employee shall receive the same payments and provisions that apply at the mine where work is being performed.

16 Weekend Work

16.1 Saturday Work

Ordinary hours of work on a Saturday shall be paid at the rate of time and one half for the first four hours and double time thereafter or the higher rate which may apply at the mine at which the employees are engaged.

16.2 Sunday Work

The rate for all Sunday work shall be at double time.

16.3 Minimum Payment

Minimum Payment: Unless continuous with work commenced the previous day or not reasonably notified an employee called on to work on a Saturday, Sunday or holiday, shall be paid for at least four (4) hours at double time.

PART 5 LEAVE AND PUBLIC HOLIDAYS

17 Public Holidays

All recognised holidays for the purposes of this Agreement are:

- New Year's Day
- Australia Day
- Good Friday
- Easter Saturday (where it forms part of the employee's normal roster)
- Easter Monday
- Easter Tuesday or such other day as may be agreed between the parties
- Anzac Day
- Queen's Birthday
- Labour Day
- Christmas Day
- Boxing Day

and/or such other day/s as may be gazetted in the particular region.

The employer and the majority of employees affected at a particular site may agree to observe a holiday on a day other than the day prescribed above. If this occurs, the day agreed is the award holiday and the actual holiday becomes an ordinary working day.

17.1 Public Holiday Payments

An employee other than a casual employee not required to work a recognised holiday shall be paid for the ordinary hours of that shift not worked for that day at the applicable rate in Clause 11.2 of this Agreement.

Permanent employees required to work during ordinary hours on a recognised holiday shall be paid at double time in addition to the payment prescribed above. Overtime on a recognised holiday shall be paid at treble time.

Casual employees required to work during ordinary hours on a recognised holiday shall be paid at double time. A casual employee working overtime on a recognised holiday shall be paid at treble time.

18 Annual Leave

18.1 Entitlement to Annual Leave

An employee is entitled to annual leave of five weeks for each year of service.

An employee who:

- (i) is a seven day roster employee; or
- (ii) works a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays,

is entitled annually to an additional 1 week of annual leave.

18.2 Payment for Annual Leave

An employee taking annual leave must be paid the greater of:

- (a) the employee's ordinary rate of pay in clause 11.2 plus a loading of 20% of that rate; or
- (b) the employee's rostered earnings for the period of annual leave, which includes all rostered overtime and rostered public holidays will be paid at the normal rostered rate or at the rate consistent with the mine in which the work is performed should that rate be greater, but does not include shift allowances, other than for seven day roster employees.
- (c) Bonus payment will apply to a) and b) above (if applicable)

When annual leave is taken by the employee, the Company may require that the leave be taken in accordance with the employee's roster.

18.3 Accrual of Annual Leave

Employees, other than casual employees, accrue annual leave at the following rate:

| For employees who would be entitled to Annual Leave of: | Hours of Annual Leave for each completed week of Employment |
|---|---|
| 5 Weeks | 3.3654 |
| 6 Weeks | 4.0385 |

18.4 Taking of Leave Before Accrued

The Company may allow annual leave to be taken by an employee before the right thereto has accrued.

The Company may shut down all or a section of the operation by giving not less than one month's notice. During such shutdowns, employees may be directed to take annual leave or approved leave without pay. An employee who does not have leave entitlement sufficient for the shut down period will be allowed unpaid leave of absence. The Company may agree to advance annual leave to an employee who does not have sufficient accrued annual leave to cover the shut down period.

Where periods of leave without pay are taken under this clause, the leave without pay will be counted as continuous service

18.5 Payment on Termination of Employment

On termination, unused accrued annual leave will be paid as per the Coal Mining Modern Award, as if normal leave had been taken.

18.6 When Annual Leave may be Taken

Annual Leave will be taken at a time subject to the convenience of the Company and will not be for periods of less than one week, unless specifically agreed.

Employees with excess annual leave accrued may be required to take annual leave in accordance with the provisions of the NES

18.7 Casual employees

Casual employees are not entitled to annual leave.

19 Personal/Carer's Leave

Personal/Carer's Leave is defined as:

Paid leave (sick leave) taken by an employee because of a personal illness, or injury, of the employee; or

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 a personal illness or injury, of the member.

Immediate family is defined as a spouse, child, parent, grandparent, grandchild or sibling of the employee or a child, parent, grandparent, grandchild or sibling of a spouse of the Employee.

19.1 Entitlement to Personal Leave

A full time employee is entitled to 105 hours of Personal /Carers leave per completed year of service, accrued as prescribed in the National Employment

Standards (NES). Any personal leave which is not taken by an employee must accumulate from year to year without limitation.

A part time or fixed term employee will receive a pro rata entitlement to personal / carers leave. That is, in the same proportion as their average hours worked over the preceding 12 month period.

A casual employee has no entitlement to paid personal leave. Eligible casuals may be entitled to unpaid carers leave pursuant to the NES.

19.2 Notification of Personal / Carer's Leave

An employee will notify the Company (in accordance with the procedure nominated by the Company) before the start of the shift that he/she will be absent.

The Company may require an employee to substantiate, by the provision of a medical certificate or other evidence, that they were unable on account of such illness or injury to attend for duty on the day or days for which personal leave is claimed. An employee claiming personal leave on the working day before or after a public holiday or on the working day before or after an approved period of annual or long service leave, must support that claim by a medical certificate or other evidence.

19.3 Payment for Personal / Carer's Leave

Payment will be at the hourly rate for the ordinary hours of the shift missed as outlined in the letter of appointment as per Clause 11.2. Bonus payments will continue to be paid during Personal / Carer Leave absences if they would have applied during the shift the employee would have worked. There will be an equivalent deduction of ordinary hours deducted from the employees personal leave accrual.

Carer's Leave – Paid. A full time, part time or fixed term employee with responsibilities in relation to members of their immediate family or members of their household who need their care and support may use accrued personal leave to provide care and support for them when they are ill. The Company may require the employee to provide suitable documentary proof of the need for the leave.

Carer's Leave – Unpaid. Employees are entitled to up to 2 days unpaid carer's leave for each occasion when a member of the employee's immediate family or household requires care or support because of a personal illness or injury or an unexpected emergency. An employee is only entitled to unpaid carer's leave if they have exhausted their personal/carer's leave entitlements.

In order to be entitled to unpaid carer's leave, employees must give notice and substantiate the reason for their absence (by medical certificate or otherwise) in the same way as for paid personal/carer's leave.

19.4 Payment on Termination of Employment

Any employee who is retrenched, or terminates his employment for any reason other than wilful misconduct or who dies, and has accrued more than 80 or more hours of sick leave shall be granted payment on the basis of hours ordinary pay for each hour accrued.

20 Compassionate Leave

Employees are entitled to paid compassionate leave of 2 days without loss of pay, for each occasion after the death of a member of their immediate family or household or for the purposes of spending time with a person who is a member of their immediate family or household who contracts or sustains a personal illness or injury that poses a serious threat to their life. This leave may be taken as a single unbroken period of 2 days or as 2 separate periods of 1 day each. In circumstances of personal injury or illness of a relevant person employees are entitled to start to take the compassionate leave at any time while the illness or injury persists.

Employees must provide the Company with reasonable evidence of the illness, injury or death.

21 Witness Payment

Where an industrial issue is referred to the FWA (or its successor) or any other tribunal or court, representatives and witnesses required to attend before the tribunal or court shall be regarded as being on duty and shall be paid for attending. The Company shall also pay all reasonable travel and other expenses (such as transcript expenses) associated with such attendance.

22 Jury Service

An employee required to attend for jury service during normal working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of attendance for such jury service and the amount of wages which would have been received in respect of ordinary pay had the employee not been on jury service.

23 Long Service Leave – Mining Industry

23.1 Period of Leave

Subject to Clause 8.3 an employee shall accrue long service leave in accordance with the legislated standard for the Black Coal Industry

23.2 Time of Taking Leave

Long service leave may be taken at any time by an employee who has become due for such leave provided that:

- (a) an employee seeking to take long service leave shall give four (4) weeks' notice of their intention to their immediate supervisor on the form provided.
- (b) the operations which the employee works will not, in the opinion of the employer, be effected by the granting of the leave at that time.
- (c) an employee who has accumulated thirteen (13) weeks of entitlement may, with the consent of the employer, take such thirteen (13) weeks.
- (d) following the first entitlement of long service leave, and whilst the employment remains continuous, an employee shall be entitled to take further long service leave for each sixty four (64) weeks of service.
- (e) long service leave shall not be taken in periods of less than two (2) weeks.

23.3 Long Service Leave Payments

On or before the last working day prior to the commencement of long service leave, an employee shall be paid for the leave. All long service leave accrued will be paid at ordinary rates for each week taken.

The rate of payment at the time of taking of long service leave shall be in accordance with the individual's appropriate rate as described in the "Summary of Entitlements" applying at that time.

23.4 Recognised Public Holiday Falling During Period of Leave

If a recognised holiday falls within an employee's long service leave, and is observed on a day which ordinarily would have been a working day for that employee, there shall be added to the period of long service leave one day, being an ordinary working day, for each such recognised holiday.

23.5 Payment on Termination of Employment

- (a) where the services of an employee are terminated because of age, or by the employer because of ill health, or in the case of death, such employee shall be granted payment as if at work for any long service leave accumulated and not already taken.
- (b) on termination of employment an employee who at the date of such termination has accumulated a minimum of thirteen (13) weeks of entitlement shall be granted payment as if at work for any long service leave accumulated and not already taken. Provided that where special circumstances exist, an employer upon application to Fair Work Australia

may be granted relief from the obligation herein imposed upon such terms as the Commission may deem just and expedient.

23.6 Retrenchment – Credit for Prior Service

An employee whose services are terminated by either severance or retrenchment and at the date of such termination, has an entitlement to long service leave accrued and not already taken or paid in lieu, shall upon re-employment be given credit for such prior services.

23.7 Retrenchment

Payment when more than six years' service:-

An employee who has a minimum of six completed years of continuous service, whose services are terminated by the employer because of slackness of trade and who despite taking all reasonable steps has been unable within a period of three months after the date of such termination, or the attainment of the age of sixty years or death (whichever happens first) to obtain further employment in the industry and in respect of whom the parties agree, or in the event of disagreement Fair Work Australia certifies that reasonable steps were taken to obtain such work, shall be granted payment at ordinary rates

24 Parental Leave

Parental Leave will be in accordance with the NES as prescribed in the Fair Work Act and its successors.

25 Accident Pay

This clause applies to all employees (including casuals although they are not entitled to personal leave).

An employee who is injured during the course of his/her employment shall be entitled to payment in accordance with the applicable New South Wales or Queensland Workers Compensation legislation as it relates to the Coal Mining Industry, including accident pay.

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:

25.1 Payment to be made during incapacity

An employer must pay, or cause to be paid, accident pay during the incapacity of the employee, within the meaning of the applicable workers compensation legislation:

- until such incapacity ceases; or
- until the expiration of a period of 78 weeks from the date of injury;
- whichever event will first occur, even if the employer terminates the employee's employment within the period.

25.2 Meaning of accident pay

For the purposes of this clause accident pay means as per the rate in their Summary of Entitlement letter.

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 Agreement had the employee been on paid personal leave as per the rate in the "Summary of Entitlements" at the date of the injury (provided the latter amount is greater than the former amount).

During the initial 39 week Accident Leave period the employee will also be entitled to Bonus payment if such payment is normally in place and would have been paid if the employee was at work.

For a further period of 39 weeks a weekly payment representing the difference between the weekly amounts 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).

25.3 Pro rata payments

In respect of incapacity for part of a week the amount payable to the employee as accident pay will be a direct pro rata.

25.4 When not entitled to payment

An employee will not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

25.5 Redemptions

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.

25.6 Damages independent of the Acts

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 this clause and the employee will not be entitled to any further accident pay thereafter

25.7 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.

26. Payroll Deductions

The Company shall, upon the provision of signed authority from the employee, provide pay-roll deduction facilities to employees for any legitimate purpose including:

- (a) Payment of union dues and subscriptions
- (b) Salary sacrifice payments
- (c) Donations and gifts.

An employee shall not be entitled to more than 5 separate deductions from his or her pay.

27. Stand Down

The Company shall have the right to refuse payment to any employee for any day or part day during which an employee is stood down as a result of refusal of duty, neglect of duty or misconduct of the employee, or the employee cannot be usefully employed in the employee's usual classification because of a strike, or a breakdown of machinery which has lasted longer than 4 days.

27.1 Wet Weather

The Company may stand down an employee without pay during a period in which the employee cannot work at the Client site due to wet weather and the Client has directed that employees not attend work.

The Company is not required to pay an employee whilst they are stood down.

Employees, other than Casuals, who are stood down due to wet weather as outlined in this clause will be entitled to payment for those days not exceeding 5 days per calendar month. The 5 days a calendar month do not accumulate. An employee who is paid for those days is paid as if they were at work.

Employees who have been stood down without pay under the circumstances outlined in this clause may request to take outstanding leave entitlements, but if the employee does not request to take outstanding leave or does not have adequate accrued entitlements, they may be stood down without payment.

The Company will take all reasonable steps to minimise the need for standing down employees, including, where practical carrying out training.

A period during which an employee is stood down under this clause, does not break the employee's continuity of service.

PART 6 DISPUTE RESOLUTION AND CONSULTATION

28. Disputes Procedure

If a dispute relates to:

- (i) a matter arising under the Agreement;
- (ii) Matters of employment in general, or
- (iii) the National Employment Standards

this term sets out procedures to settle the dispute.

- (a) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (b) In the first instance the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (c) If no resolution to the dispute, the matter will be referred for discussion between the Company and the relevant Union District Official
- (d) If the above discussions do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.
- (e) Fair Work Australia may deal with the dispute in 2 stages:
 - (i) Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - (ii) If Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
 - arbitrate the dispute; and
 - make a determination that is binding on the parties

Note: if Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.



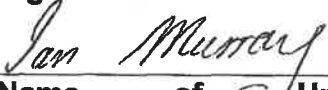

- (e) While the parties are trying to resolve the dispute using the procedures in this term:

- (i) An employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - (ii) An employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
 - the work is not safe; or
 - applicable occupational health and safety legislation would not permit the work to be performed; or
 - the work is not appropriate for the employee to perform; or
 - there are other reasonable grounds for the employee to refuse to comply with the direction.
- (f) The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.

29. Consultation Term

- (a) This term applies if:
- (i) the employer is considering the introduction of a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
 - (ii) the change is likely to have a significant effect on employees of the enterprise.
- (b) The employer must notify the relevant employees of the decision to introduce the major change.
- (c) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (d) If:
- (i) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (ii) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- (e) As soon as practicable prior to making its decision, the employer must:
- (i) discuss with the relevant employees:
 - the introduction of the change; and
 - the effect the change is likely to have on the employees; and

- measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- (ii) for the purposes of the discussion – provide, in writing, to the relevant employees:
- all relevant information about the change including the nature of the change proposed; and
 - information about the expected effects of the change on the employees; and
 - any other matters likely to effect the employees.
- (f) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (g) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (h) If a term in the enterprise 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 subclauses (b), (c) and (e) are taken not to apply.
- (i) In this term, a major change is likely to have a significant effect on employees if it results in:
- (i) the termination of the employment of employees; or
 - (ii) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - (iii) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (iv) the alteration of hours of work; or
 - (v) the need to retrain employees; or
 - (vi) the need to relocate employees to another workplace; or
 - (vii) the restructuring of jobs.
- (j) In this term, relevant employees means the employees who may be affected by the major change.

| | |
|---|---|
| Signed for and on behalf of TESA Group Pty Ltd | |
| Authorised Officer signature: |  |
| Name of TESA Representative | Todd Pavlov |
| Authority to Sign (Position/Title) | General Manager - NSW and Qld. |
| Address of TESA Group | 165 Lambton Road Broadmeadow |
| Date | 7 / 11 / 12 |
| In the presence of: | |
| Witness signature: |  |
| Name of Witness | Samantha Moore |
| Date | 7 / 11 / 12 |
| Signed for and on behalf of the Construction, Forestry, Mining and Energy Union (Mining and Energy Division) | |
| Signature: |  |
| Name of Union Representative | IAN MURRAY |
| Authority to Sign (Position/Title) | General Vice President |
| Address of CFMEU | 215-217 Clarence Street Sydney |
| Date: | 9 / 11 / 12 |
| Witness signature: |  |
| Name of Witness | Samantha Moore |
| Date: | 9 / 11 / 12 |

