



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

FES Coal Pty Ltd
(AG2018/2778)

FES COAL PTY LTD GREENFIELD AGREEMENT 2018

Coal industry

DEPUTY PRESIDENT KOVACIC

CANBERRA, 13 AUGUST 2018

Application for approval of the FES Coal Pty Ltd Greenfield Agreement 2018.

[1] An application has been made for approval of a greenfields agreement known as the *FES Coal Pty Ltd Greenfield Agreement 2018* (the Agreement). The application was made by FES Coal Pty Ltd pursuant to s.185 of the *Fair Work Act 2009* (Act).

[2] This is a greenfields agreement that meets the requirements of section 172(2)(b) of the Act. I am satisfied that each of the requirements of ss.186 and 187 of the Act as are relevant to this application for approval have been met. In accordance with s.187(5)(a) of the Act, I am satisfied that the Construction, Forestry, Maritime, Mining and Energy Union is entitled to represent the industrial interests of a majority of employees who will be covered by the Agreement in relation to work that is to be performed under it. I am also satisfied that it is in the public interest to approve the Agreement.

[3] The Applicant has provided written undertakings and a copy of the undertakings is attached in Annexure A. In accordance with s.191(2) of the Act, the undertakings are taken to be a term of the Agreement.

[4] Pursuant to s.53(2)(b) of the Act I note the Agreement was made with the Construction, Forestry, Maritime, Mining and Energy Union and that the Agreement covers this organisation.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 20 August 2018. The nominal expiry date of the Agreement is 13 August 2022.



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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2018/2778

Applicant:
FES Coal Pty Ltd

Undertaking- section 190


FES Coal Pty Ltd provides the following undertakings pursuant to section 190 of the *Fair Work Act 2009* (Cth) in relation to the FES Coal Pty Ltd Greenfield Agreement 2018 (**Agreement**):

1. Despite section 57 of the Act, the Company will apply the Black Coal Mining Industry Award 2010 in a manner consistent with clause 6.6 of the Agreement.
2. Employees who are paid a base rate of pay under the Agreement are entitled to payment for overtime in accordance with clause 17.2 of the Award.
3. Casual employees working on a public holiday are entitled to be paid a casual loading of 25% in accordance with clause 8.9 of the Agreement. Those employees are also entitled to be paid the public holiday penalty prescribed in clause 8.11 of the Agreement. The penalties are non-compounding.

Example: Casual employee is working on a public holiday. For work during ordinary hours, the casual employee is entitled to a rate of 225% of the base rate.

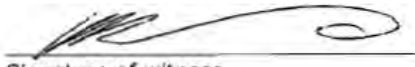
4. Employees who are paid a base rate of pay under the Agreement, who perform overtime hours on a 6 or 7 day roster are entitled to the penalty prescribed in clause 22.2 of the Award.
5. Employees who are paid a base rate of pay under the Agreement, who work ordinary hours on a Saturday or Sunday are entitled to the shift penalty prescribed in clause 21.2 of the Award.
6. Casual employees who are not employed in accordance with a fixed roster, and who may be required to work odd hours and for short engagements, will only be paid by the Company in accordance with the relevant base rate of pay in the Agreement and applicable penalties and allowances (i.e. these casual employees will not be paid a flat rate of pay).

SIGNED for **FES COAL PTY LTD** by
its duly authorised officer, in the
presence of:



Signature of officer
DHIRENDRA SHANTILAL

Name



Signature of witness

BEW LEWIS
Name

Date: 31 / 7 / 18

FES Coal Pty Ltd Greenfield Agreement 2018

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

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1 DEFINITIONS

"Act" means the *Fair Work Act 2009 (Cth)*.

"Afternoon Shift" means any shift in respect of which the rostered ordinary hours finish after 6.00pm and at or before midnight.

"Agreement" means the *FES Coal Pty Ltd Greenfield Agreement 2018*.

"assignment" means a period of employment by an employee at a client or host employer's workplace.

"Award" means the *Black Coal Mining Industry Award 2010*.

"base rate of pay" means the rates set out in clause 10.9 of this Agreement.

"casual employee" means an employee employed on a casual basis.

"CFMEU or "the Union" means the Construction, Forestry, Maritime, Mining and Energy Union.

"client" or "host employer" means the party to which the Company will provide labour hire services and to which workplace the employee is assigned.

"coal mining industry" or "black coal mining industry" has the same meaning as contained in the Award.

"Company" or "employer" means FES Coal Pty Ltd

"Day Worker" is an Employee who is rostered to work Monday to Friday, with shifts commencing after 6.00am and finishing before 6.00pm.

"FWC" means the Fair Work Commission.

"fixed term employee" means an employee employed for a fixed period of employment as specified in the employee's letter of offer. The wages and entitlements of a fixed term employee shall be the same as an equivalent permanent employee with the exception that a fixed term employee shall not be entitled to redundancy pay.

"employee" means a person employed by the Company who performs work within the coverage of the Award.

"employee representative" means a person nominated by an employee or employees to represent their interests under the Agreement and may include a representative of the Union.

"Group" means the Fircroft Australia Pty Ltd and One Key Resources group of companies.

"ordinary hours" shall be thirty-five (35) hours per week averaged over the roster cycle.

"Night Shift" means any shift in respect of which the rostered ordinary hours finish after midnight and at or before 8.00am.

"permanent full-time employee" is an employee who is engaged on a constant number of hours, with an average of no less than 35 ordinary hours per week over a roster cycle.

"part-time employee" is an employee who works an agreed regular number of hours that are less than 35 ordinary hours per week averaged over the roster cycle. Part-time employees are entitled to all the benefits of permanent employment, but on a pro-rata basis.

"Redundancy" means the decision to terminate an employee's employment because the Company no longer requires the employee's job to be done by anyone, and the Company has been unable to obtain an offer of acceptable alternative employment for the employee.

"Regular Casual Employee" means a casual Employee who has over a calendar period of at least 12 months, worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time Employee or part-time Employee under this Agreement.

"Shift Worker" is an Employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a Day Worker.

2 AGREEMENT TITLE

This Agreement shall be known as the *FES Coal Pty Ltd Greenfield Agreement 2018*.

3 PARTIES TO THE AGREEMENT

The parties to the Agreement are FES Coal Pty Ltd and the Construction, Forestry, Maritime, Mining & Energy Union.

4 PRINCIPLES UNDERLYING THIS AGREEMENT

- 4.1 The Company is committed to complying with its obligations with respect to the health and safety of its employees.
- 4.2 Accepting all relevant legal obligations, the Company has the responsibility and right to manage its business in a manner which ensures its viability and sustainability.
- 4.3 The Company is committed to an ethical and transparent approach to its business and will endeavor to give effect to this objective at all times.

4.4 The Company recognises the legitimate aspiration of employees for job security and fair pay and conditions and will try to meet such expectations whilst maintaining the viability of the business.

4.5 The Company recognises the right of employees to collectively bargain and to be represented by the Union.

4.6 Employees accept that they have a responsibility to comply with Company policies and lawful and reasonable directions, provided that it is safe to do so.

5 NO EXTRA CLAIMS

5.1 The Employees will not, during the term of this Agreement, pursue any further claims about any matter which pertains to the employment relationship.

6 INCIDENCE AND APPLICATION

6.1 This Agreement shall come into operation and be binding on the parties from the date of approval by the FWC and shall have a nominal expiry date of 4 years following approval.

6.2 The Agreement shall apply to employees employed within the coverage of the Award, with the exception of employees engaged in underground coal mines located in the New South Wales Southern and Lithgow mining districts of New South Wales.

6.3 The parties to this Agreement undertake to commence negotiations for a replacement Agreement no later than three (3) months prior to the expiration of this Agreement.

6.4 This Agreement will be binding on any successor to, or any assignee of the business. For the purposes of this clause 'business' refers to the operations of the Company in the black coal mining industry.

6.5 The Company will not transmit, assign or otherwise transfer the business or part thereof, without requiring any successor to, assignee or transferee to assume its obligations under this Agreement including all accrued entitlements, rights or obligations to employees.

6.6 This Agreement is to be read in conjunction with the Award, provided that where there is any inconsistency between this Agreement and the Award, this Agreement will take precedence. Where this Agreement is silent the provisions of the Award will apply.

7 EMPLOYMENT RELATIONSHIP

7.1 The Company may direct an employee to carry out such duties as are reasonably required, provided that such duties are within safe working practices and statutory requirements.

7.2 As the Company is a labour hire business, the hours of work, roster arrangements and day to day supervision of employees will normally be determined by the client or host employer.

7.3 Where the Company is in a position to determine roster arrangements or hours of work, it will attempt to reach agreement with a majority of the employees affected by the proposed roster arrangement. If agreement cannot be reached, the matter may be determined under the disputes resolution procedure contained in this agreement. This obligations in this clause shall be in addition to the consultation obligations contained in clause 27 of this Agreement.

8 EMPLOYMENT CATEGORIES

Permanent employment

8.1 A permanent full-time employee is an employee engaged by the week on an ongoing basis and whose hours average 35 ordinary hours per week over the roster cycle.

8.2 Permanent employees are subject to a 3 month probationary period. During this period either party may terminate the employment relationship with the provision of 1 week notice or payment in lieu of such notice.

8.3 The probationary period will not apply to former casual employees who have been offered permanent or fixed term employment after being employed by the Company, on a continuous basis on the same site, for a period of more than 3 months.

Part-time employment

8.4 Part-time employees have all the entitlements and attributes of permanent employees except that their average ordinary hours are less than 35 per week and therefore their entitlements accrue on a pro-rata basis. Part-time work arrangements can only be entered into by mutual agreement of the employee and the Company. If an employee and the Company agree on a part-time work arrangement, the hours of work and roster arrangements will be contained in a written agreement. Any work conducted outside of the agreed hours of work will be treated as un-rostered overtime hours under the Agreement.

Fixed term employment

8.5 A fixed term employee is engaged on the same basis as a permanent employee, except that his or her letter of offer contains the date upon which the fixed term of employment comes to an end.

8.6 A fixed term employee is entitled to the same wages and conditions as an equivalent permanent employee, except for the entitlement to redundancy pay. A fixed term of employment is for a maximum term of 2 years, unless extended by mutual agreement up to an additional 12 months.

8.7 Where an employee under a fixed term of employment exceeds 2 years' service with the Company, or 3 years' service where an extension has been agreed, the

fixed term employee, if still employed by the Company, shall be deemed to be a permanent employee. In this situation, the prior service of the fixed term employee shall count for all purposes, other than redundancy.

Casual employment

- 8.8 An employee may be engaged on a casual basis. A casual engagement will be for a minimum of 1 day on each occasion except when a casual employee attends for work and such work is cancelled before or during the shift. If this occurs, the employee shall be paid a minimum of 4 hours pay.
- 8.9 A payment of 25% loading on the base rate is payable to casual employees for all hours worked. The 25% loading is in lieu of an entitlement to all paid and unpaid leave including annual leave, personal/carer's leave and public holidays not worked (but excluding long service leave).
- 8.10 If during the period of operation of the Agreement, the Award casual loading is increased, the new loading rate will be applied to casual employees employed under the Agreement.
- 8.11 Casual employees required to work on a recognised public holiday shall be paid double the base rate under the Agreement for work performed during ordinary hours, and triple the base rate applicable under the Agreement for all hours worked in excess of ordinary hours.
- 8.12 In addition to the 25% loading, casuals will be entitled to shift allowances and weekend penalty rates as applicable. Shift allowances will be paid on the base rate applicable under the Agreement.
- 8.13 A Regular Casual Employee may request in writing the opportunity to immediately convert from casual employment to a fixed term or permanent employment (the choice of which category shall be the Company's). The Company must not refuse a Regular Casual Employee's request to convert his or her employment status.
- 8.14 The conversion referred to in clause 8.13 will take effect at the commencement of the next pay cycle unless otherwise agreed.
- 8.15 The Company commits to not engage in the practice of employee "churning" or other contrived practices in order to avoid conversion from casual employment to fixed term or permanent employment or from fixed term employment to permanent employment. Any dispute about the proper application of this clause may be dealt with under the dispute settlement procedure.
- 8.16 Nothing in this clause requires the Company to increase the hours of a Regular Casual Employee who has converted to fixed-term or permanent employment in accordance with clause 8.13.

9 HOURS OF WORK

Ordinary hours

- 9.1 The ordinary hours of work shall be a maximum of thirty-five (35) hours per week averaged over the roster cycle.
- 9.2 Where an employee is engaged under a casual contract of employment, but works in accordance with a set roster, the ordinary hours applicable to the casual employee shall be the same as that which applies to permanent employees of the Company working the same roster.

Shift length and rosters

- 9.3 The Company shall have the right to determine that an employee shall work a rostered shift length of up to 12.5 hours in duration and any roster arrangement applicable at a client or host employer's workplace.
- 9.4 The details of the roster and shift lengths applicable to an employee shall be contained in a letter of assignment provided by the Company.

Starting and finishing times

- 9.5 Starting and finishing times, tolerance times, shift lengths and rosters for employees will in general be consistent with those worked at the particular mine at which employees covered by the Agreement are working.

10 WAGES AND RELATED MATTERS

- 10.1 The Company may pay an Employee a flat rate of pay for each rostered hour worked. The flat rate of pay consolidates the base rate of pay, shift allowances, Award allowances, rostered overtime, weekend and public holiday penalties applicable to an employee's roster arrangement into a single hourly rate of pay applied to each rostered hour of work.
- 10.2 An employee paid a flat rate of pay under this Agreement will be no worse off than an employee who is paid a base rate of pay plus allowances and penalties under this Agreement.
- 10.3 For casual employees, the flat rate of pay also includes the 25% casual loading.
- 10.4 Nothing in this Agreement shall prevent the Company from offering a higher flat rate of pay than contained in the Agreement at a particular workplace, provided that the flat rate of pay shall be uniform for employees within a particular classification.
- 10.5 As of the date of this Agreement being made, any employee who has the benefit of a higher flat rate of pay as specified in his or her letter of offer or assignment, shall maintain that flat rate of pay until the base rates of pay contained in this Agreement (when consolidated into flat rates of pay in accordance with clause 10.1 above), meet or exceed the rates contained in the letter of offer or assignment. This guarantee shall apply as long as the employee is employed in the same position at the same workplace within the

black coal mining industry. This guarantee shall apply in respect to any letter of offer issued by a company within the Group.

- 10.6 Where a client or host employer offers a bonus or productivity incentive scheme that is intended for the benefit of employees of the Company, the Company will ensure that employees obtain the full value of the bonus or incentive scheme without any deduction in the rate of pay provided by the Company. Further, nothing in this Agreement shall be read as preventing the Company from paying employees a District average bonus, where this is the accepted practice in a particular District or locality.
- 10.7 Similarly, there may at some workplaces be a "site" rate that is required by the client or host employer to be paid to employees. The Company will ensure that where such arrangements are in place, the employee shall be no worse off relative to the rates of pay contained in the Agreement.

Base pay rates

- 10.8 Employees shall be entitled to base rates of pay as per the table below. Where an employee is paid a flat rate of pay, the base rates of pay will form part of the flat-hourly rates.
- 10.9 The base rates of pay shall be increased by the rate of 2.5% on 1 July 2019 and annually thereafter during the nominal term of the Agreement.

Classification	Base rate hourly (permanent full-time, part-time and fixed term)				
	On approval	1 July 2019	1 July 2020	1 July 2021	1 July 2022
Inexperienced Mineworker (Award equivalent "Mineworker Training")	\$25.28	\$25.91	\$26.56	\$27.22	\$27.90
Experienced Mineworker (Award equivalent "Mineworker")	\$27.00	\$27.68	\$28.37	\$29.08	\$29.81
Experienced Trade (Award equivalent "Mineworker Advanced")	\$28.31	\$29.02	\$29.74	\$30.49	\$31.25
Supervisor (Award equivalent "Mineworker -Specialised")	\$31.22	\$32.00	\$32.80	\$33.62	\$34.46
Deputy/OCE (Award equivalent Schedule B, Group H)	\$31.22	\$32.00	\$32.80	\$33.62	\$34.46

- 10.10 Except by agreement, all wages will be paid weekly by electronic funds transfer into an account or accounts nominated by the employee.
- 10.11 Upon termination of employment, wages due to an employee are to be paid by electronic transfer or posted to the employee's last known address within the first pay period following such termination.

- 10.12 Increases are payable from the commencement of the first pay period following the anniversary date.

11 ALLOWANCES

- 11.1 The allowances applicable under the Award have been consolidated into the base hourly rates of pay contained in clause 10.9 above.

12 OVERTIME

Overtime rates of pay

- 12.1 Overtime rates of pay as provided in the Award are consolidated into the flat hourly rate of pay for any overtime hours falling within the particular roster applying to an employee.
- 12.2 However, where an employee works overtime in excess of rostered hours, he or she shall be paid the overtime rate of double the applicable base rate contained in clause 10.9 of the Agreement.

13 SHIFT WORK

- 13.1 Work on an Afternoon shift or rotating Night Shift by a Shift Worker is paid at 115% of the base rate.
- 13.2 Work on a Night Shift on a permanent basis by a Shift Worker is paid at 125% of the base rate.

14 CRIB BREAKS

- 14.1 A period of thirty (30) minutes shall be allowed each shift for the taking of crib for shift lengths up to 10 hours. For shift lengths over ten (10) hours two periods of thirty (30) minutes shall be allowed each shift for the taking of crib. Such periods shall be counted as time worked.
- 14.2 Where possible, employees will not be required to work for more than five (5) hours without a break for crib.
- 14.3 In recognition that a host employer or client's hours of work or roster arrangements at a particular workplace might provide for a different crib break arrangement than provided for in the Award, the base rate of pay in the Agreement provides compensation for any inconvenience an employee may incur.

15 PROTECTIVE CLOTHING

- 15.1 As a minimum, each employee shall be provided with task specific safety equipment such as earplugs and safety glasses which will be provided on an 'as needed' basis at no cost to the employee.

15.2 Where an employee requires prescription safety glasses, the Company will make a one-off contribution of \$350 to the cost of such glasses.

15.3 The employee will be supplied with safety boots, industrial outer clothing and winter jacket on an 'as needed' basis (as determined by the Company) in consideration of the roster cycle. Such items will be replaced on an 'as needed' basis (as determined by the Company). The Company shall adopt a reasonable approach to the issuing of protective clothing and any employee who believes that the approach of the Company is not reasonable, may raise a grievance under the disputes settlement procedure.

16 ANNUAL LEAVE

Credit for annual leave

16.1 An employee (other than a casual employee) will be credited with annual leave at the end of each pay period.

16.2 Employees (other than a casual employee) will accrue annual leave at the rate of accrual contained in the Award.

16.3 An employee who is not a 7-day roster employee, or whose roster does not include work on public holidays and more than 272 hours per year on Sundays, shall be entitled to 175 hours annual leave per year of continuous service. The entitlement shall accrue at the rate of 3.3654 hours per week of completed service.

16.4 An employee who is a 7-day roster employee, or whose roster does include work on public holidays and more than 272 hours per year on Sundays, shall be entitled to 210 hours annual leave per year of continuous service. The entitlement shall accrue at the rate of 4.0385 hours per week of completed service.

16.5 The rate of pay applicable for each week of annual leave taken shall be 35 hours at the base rate of pay, plus 20% annual leave loading or projected roster earnings, whichever is the greater.

16.6 For each period of annual leave taken the ordinary hours of rostered shifts that would have been worked by an employee will be deducted from the employee's accrued annual leave entitlement.

16.7 All other terms regarding annual leave shall be as per the Award.

17 PERSONAL/CARER'S LEAVE

17.1 Employees are entitled to personal/carer's leave at the rate of 105 ordinary hours (inclusive of the Employee's entitlement under the Act) per year of continuous service.

17.2 Employees will be credited with their first year's entitlement to personal/carer's leave on commencing employment. Each subsequent year's entitlement to

personal/carer's leave will be credited on the Employee's anniversary of commencement.

17.3 An employee who takes personal/carer's leave will be paid at their base rate of pay for the ordinary hours not worked.

17.4 An Employee is entitled to take personal/carer's leave if:

- (a) they are unable to perform their duties because of personal illness or injury; or
- (b) they are required to provide care or support for a member of their immediate family or household because of that person's personal illness, injury or an unexpected emergency affecting that person.

Immediate family includes the employee's spouse, a de facto partner, a child, parent, grandparent, grandchild, or sibling, of the Employee or their spouse or de facto partner.

17.5 When an employee takes personal/carer's leave, the Employee's accrued personal/carer's leave will be reduced by the ordinary hours the Employee would otherwise have worked in accordance with their roster.

17.6 The Company may require the Employee to provide reasonable proof of the Employee's need to take personal/carer's leave prior to it being paid.

17.7 Casual employees are not entitled to payment for personal/carer's leave.

18 COMPASSIONATE LEAVE

18.1 Employees are entitled to 2 days of compassionate leave for each occasion ("a permissible occasion") when a member of the employee's immediate family, or a member of the employee's household:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (b) sustains a personal injury that poses a serious threat to his or her life; or
- (c) dies.

18.2 An employee may take compassionate leave for a particular permissible occasion if the leave is taken:

- (a) to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in the above clause; or
- (b) after the death of the member of the employee's immediate family or household referred to in the above clause.

- 18.3 An employee may take compassionate leave for a particular permissible occasion as:
- (a) a single continuous 2 day period; or
 - (b) 2 separate periods of 1 day each; or
 - (c) any separate periods to which the employee and his or her employer agree.
- 18.4 If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.
- 18.5 If an employee, other than a casual employee, takes a period of compassionate leave, the Company must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period. For casual employees, compassionate leave is unpaid leave.
- 18.6 Employees are required to apply for leave and may be required to prove to the reasonable satisfaction of the Company the basis of the leave.

19 LONG SERVICE LEAVE

- 19.1 All employees (including casual employees) are entitled to long service leave in accordance with Commonwealth legislation that is specific to the black coal mining industry.
- 19.2 The basic entitlement is for 13 weeks long service leave after 8 years aggregate service in the black coal mining industry.
- 19.3 Payment for long service leave taken shall be at the employee's base rate of pay for the employee's normal weekly hours averaged over the roster cycle that would have fallen during the period of leave.
- 19.4 The Company will ensure that all employees covered by the Agreement are registered with the Coal Mining Industry Long Service Leave Corporation.

20 PUBLIC HOLIDAYS

Recognised public holidays

- 20.1 The recognised public holidays are:
- (a) New Year's Day;
 - (b) Australia Day;
 - (c) Good Friday;
 - (d) Easter Saturday;

- (e) Easter Sunday
- (f) Easter Monday;
- (g) Easter Tuesday;
- (h) ANZAC Day;
- (i) May Day or Labour Day;
- (j) Queen's Birthday;
- (k) Christmas Day;
- (l) Boxing Day; or
- (m) any other day gazetted as a public holiday in the State/Territory in which the Employee is working.

Public Holiday payments

- 20.2 Payment for public holidays falling within an employee's roster are included within the flat rates of pay for employees who receive a flat rate of pay.
- 20.3 Where an employee is required to work on a public holiday that is outside of the employee's normal roster, the rate of pay to apply shall be triple the base rate under the Agreement. Work performed on a public holiday in excess of ordinary hours shall be paid at treble the base rate.
- 20.4 The Company will nominate two days from those in clause 20.1 which an employee will not be required to work.

21 ACCIDENT PAY

- 21.1 Employees shall be entitled to accident pay in accordance with the provisions of the Award, which provides for up to 78 weeks' pay during a period of incapacity resulting from a workplace injury.
- 21.2 Accident pay makes up the difference between weekly payments under workers' compensation legislation and rates of pay under the Agreement. In the case of employees in New South Wales, the relevant legislation is the *Workers' Compensation Act 1987* and for employees in Queensland, the relevant legislation is the *Workers' Compensation and Rehabilitation Act 2003*.

22 SUPERANNUATION

- 22.1 The Company will make superannuation contributions on behalf of each employee at the rate prescribed under the relevant legislation, currently 9.5% of Ordinary Time Earnings (OTE).
- 22.2 OTE referred to in above clause will mean the employee's normal rostered hours of work including rostered overtime but excluding non-rostered or discretionary overtime.
- 22.3 The default superannuation fund for employees under the Agreement is the Mine Super (formerly Auscoal) superannuation fund.

23 COMMUTATION OF PERSONAL/CARER'S LEAVE

- 23.1 On the anniversary date of being classified as a permanent employee or fixed term employee, an employee may elect, in writing, to salary sacrifice up to 105 hours of accrued personal/carer's leave (at the employee's base rate of pay) each year into their superannuation fund as a Company contribution, provided their personal/carer's leave balance remains at not less than 105 hours after the salary sacrifice has taken place.
- 23.2 The arrangement referred to above is subject to there being no additional cost which will be incurred by the Company as a result of the operation of the arrangement, and taxation and other legislative requirements.

24 TERMINATION OF EMPLOYMENT

Termination by the Company – fixed term or permanent employee

- 24.1 The Company must not terminate an employee's employment (other than a casual employee) unless the employee has been given either the period of notice required in the table below, or payment in lieu of notice.
- 24.2 This clause does not affect the right of the Company to dismiss an employee without notice for serious misconduct and in such cases the wages will be payable up to the time of dismissal only.

Employee's 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

24.3 The period of notice is increased by one (1) week if the employee is over 45 years old and has completed at least two (2) years continuous service with the Company.

24.4 Notwithstanding anything else in this clause, if the reason for termination is redundancy, the minimum notice period for all employees, or payment in lieu of notice is 4 weeks.

Amount of payment instead of notice

24.5 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 calculated on the basis of:

- (a) the employee's rostered hours of work; and
- (b) the amounts payable to the employee in respect of those hours, including (for example) allowances, loadings and penalties; and
- (c) any other amount payable under the employee's contract of employment.

Redundancy pay

24.6 When terminations occur due to redundancy, the employees terminated shall be entitled to a payment of 3 weeks' pay per year of service, with a minimum of 2 weeks payable in any given case.

24.7 Service will be regarded as the period from when the employee commenced employment until termination, excluding any period of casual employment.

24.8 The rate of pay applicable for redundancy pay shall be the employee's base rate of pay multiplied by 35 ordinary hours, plus any applicable bonus or incentive payment, multiplied by the number of weeks of entitlement.

24.9 Casual and fixed term employees are not entitled to redundancy pay.

25 DISPUTE/GRIEVANCE PROCEDURE

25.1 Procedure

When a dispute or a grievance arises either out of the interpretation/application of the Agreement, or the National Employment Standards, or in the course of employment, the matter will be dealt with as follows.

Step 1

The matter shall in the first instance be discussed between the employee and the immediate site or Company supervisor involved. If the matter remains unresolved:

Step 2

It shall be referred, in writing, by the person(s) raising the dispute or grievance (or his or her representative) for discussions between the employee's representative/s and the next level Company's Officer or representative. If the matter remains unresolved:

Step 3

The employee or his or her representative may refer the issue to the General Manager and if the employee chooses, an employee representative. If the matter remains unresolved:

Step 4

Either party may refer the matter to the FWC for conciliation. If the matter remains unresolved:

Step 5

If the matter remains unresolved, either party may refer the matter to the FWC for arbitration. The FWC shall exercise any powers necessary or incidental to the making of a binding determination of the dispute. If the FWC issues a determination as a result of the arbitral process, such determination shall be binding by virtue of this clause if not otherwise.

A determination issued by the FWC under this clause may be appealed as if it were a decision issued under the general arbitral powers of the tribunal.

- 25.2 In the interests of a speedy resolution of the dispute, either the Company or the Union may by-pass the first three steps in the procedure. An employee and the Company may choose to be represented at any stage of the disputes procedure.

Work arrangements during resolution

- 25.3 When a dispute/grievance is raised under this dispute settlement procedure, work shall proceed under the conditions prevailing before the dispute or grievance. Where those conditions are themselves disputed, work shall continue in accordance with the reasonable direction of the Company, the employee/s recognised skills and safe working practices. These arrangements or working conditions will be undertaken on a "without prejudice" basis.

26 INDIVIDUAL FLEXIBILITY AGREEMENTS

- 26.1 The Company and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement, in the following areas:

- (a) arrangements about when work is performed;

- (b) hourly and aggregate rates of pay;
 - (a) overtime rates;
 - (b) penalty rates;
 - (c) allowances; and
 - (d) leave loading.
- 26.2 The Company and the individual employee must have genuinely made the agreement.
- 26.3 The 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 26.1.
 - (b) be about permitted matters under s172 of the Act;
 - (c) not contain unlawful terms under s194 of the Act; and
 - (d) result in the individual employee being better off overall than if they had not entered into the agreement.
- 26.4 For the purposes of clause 25.3(d) the employee will be taken to be better off overall if:
- (a) the agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this Agreement, as it applied as at the date the agreement commences to operate; and
 - (b) the 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 State.
- 26.5 The Company must ensure that the individual flexibility arrangement:
- (a) is in writing and includes the name of the Company and employee;
 - (b) is signed by the Company and employee and if the employee is under eighteen (18) years of age, signed by a parent or guardian of the employee; and
 - (c) includes details of:
 - (i) the terms of the Agreement that will be varied by the arrangement;
 - (ii) how the arrangement will vary the effect of the terms of the Agreement;
-

- (iii) 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
- (iv) states the day on which the arrangement commences.

26.6 The Company must provide the employee and, if requested, a nominated person of the regional office of the Union, with a copy of the individual flexibility arrangement, made in accordance clause 25.1 within fourteen (14) days of the request. Any copy given to the Union may be redrafted to omit information that would otherwise identify the employee.

26.7 The Company or employee may terminate the individual flexibility arrangement:

- (a) by giving four (4) weeks written notice, to the other party to the arrangement; or
- (b) if the Company and employee agree in writing, at any time.

27 CONSULTATION REGARDING MAJOR CHANGE

27.1 This term applies if the Company:

- (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

27.2 For a major change referred to in paragraph 27.1(a):

- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
- (b) subclauses 27.3 to 27.9 apply.

27.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

27.4 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 Company of the identity of the representative,

the Company must recognise the representative.

- 27.5 As soon as practicable after making its decision, the Company 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 Company 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.
- 27.6 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 27.7 The Company must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 27.8 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 clauses 27.2(a), 27.3 and 27.5 are taken not to apply.
- 27.9 In this clause, 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

- 27.10 For a change referred to in clause 27.1(b)
- (a) the Company must notify the relevant employees of the proposed change; and
 - (b) subclauses 27.11 to 27.15 apply.
- 27.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 27.12 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 Company of the identity of the representative;
- the Company must recognise the representative.
- 27.13 As soon as practicable after proposing to introduce the change, the Company 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 Company reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the Company 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).
- 27.14 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 27.15 The Company must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 27.16 In this clause "relevant employees " means the employees who may be affected by a change referred to in clause 27.1.

28 EMPLOYEE REPRESENTATIVES/UNION DELEGATES

- 28.1 Employees may nominate an employee representative(s) of their choice to represent them in relation to any issues that arise concerning their terms and conditions of employment under the Agreement. Such representatives may be Union delegates.
- 28.2 Employee representatives/Union delegates shall be afforded reasonable time during normal working hours to attend to their representative duties. It is agreed that the performance of the role of the employee representative/Union delegate will not compromise the employee's primary responsibility which is to do the job they are employed to do by the Company.
- 28.3 Employees and their representatives agree that issues or grievances relating to employees covered by this Agreement should be ideally addressed at the source, by those directly involved, including a Company representative.
- 28.4 The Company agrees to provide a pool of up to 10 paid work days (at the employee's flat rate of pay for their rostered hours on that day) per annum in each District Branch of the Union for the use of Union delegates to attend training or Union representative meetings. The utilisation of the pool shall be as agreed between the General Manager of the Company and the General Secretary of the Mining and Energy Division of the Union.
- 28.5 Where site arrangements allow for employees to attend monthly meetings this will occur and the Company shall pay up to 2 hours pay (at the employee's base rate of pay) for employees attending such meetings.

29 ALCOHOL AND DRUG PROCEDURES

- 29.1 The parties agree that it is important to ensure employees in the workplace are not under the influence of alcohol and drugs given the resulting increased risk to employee's safety.
- 29.2 Employees shall abide by the Company and client mine-site policies in relation to not attending for work whilst under the influence of drugs or alcohol. Employees may be subjected to testing while undertaking work at a mine site, subject to the mine sites individual drug and alcohol policies.
- 29.3 If employees of the Company undertake a test at a mine site and return a positive test, disciplinary action may be instigated and an employee suspended from work, without pay, until such time as they are assessed as having a non-positive result. If, after laboratory testing, an employee is found to have returned a false positive result, the Company shall reimburse the employee for any lost pay.
- 29.4 Assistance to employees affected by drugs and alcohol will be made available, which may include, counseling, medical assistance and/or access to paid leave entitlements.

SIGNATORIES

Signed for and on behalf of the Construction, Forestry, Maritime, Mining and Energy Union - Level 11,
215 Clarence St, Sydney NSW 2000

On this 14th day of JUNE 2018

ANTHONY JOHN MAHEZ
Print Name

[Signature]
Sign

Peter Jordan
Witness (print name)

[Signature]
Witness (sign)

Explanation of authority to sign: General President, CFMME
Mining and Energy Division, authorised by the rules of
the CFMME

Signed for and on behalf of FES Coal Pty Ltd, Level 12
191 St Georges Terrace, Perth WA 6000

On this 14th day of JUNE 2018

DHIRENDRA SHANTILAL
Print name

[Signature]
Sign

BEN LEWIS
Witness (print name)

[Signature]
Witness (sign)

Explanation of authority to sign: Director of FES Coal
Pty Ltd

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2018/2778

Applicant:

FES Coal Pty Ltd

Undertaking- section 190


FES Coal Pty Ltd provides the following undertakings pursuant to section 190 of the *Fair Work Act 2009* (Cth) in relation to the FES Coal Pty Ltd Greenfield Agreement 2018 (**Agreement**):

1. Despite section 57 of the Act, the Company will apply the Black Coal Mining Industry Award 2010 in a manner consistent with clause 6.6 of the Agreement.
2. Employees who are paid a base rate of pay under the Agreement are entitled to payment for overtime in accordance with clause 17.2 of the Award.
3. Casual employees working on a public holiday are entitled to be paid a casual loading of 25% in accordance with clause 8.9 of the Agreement. Those employees are also entitled to be paid the public holiday penalty prescribed in clause 8.11 of the Agreement. The penalties are non-compounding.

Example: Casual employee is working on a public holiday. For work during ordinary hours, the casual employee is entitled to a rate of 225% of the base rate.

4. Employees who are paid a base rate of pay under the Agreement, who perform overtime hours on a 6 or 7 day roster are entitled to the penalty prescribed in clause 22.2 of the Award.
5. Employees who are paid a base rate of pay under the Agreement, who work ordinary hours on a Saturday or Sunday are entitled to the shift penalty prescribed in clause 21.2 of the Award.
6. Casual employees who are not employed in accordance with a fixed roster, and who may be required to work odd hours and for short engagements, will only be paid by the Company in accordance with the relevant base rate of pay in the Agreement and applicable penalties and allowances (i.e. these casual employees will not be paid a flat rate of pay).

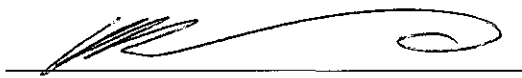
SIGNED for **FES COAL PTY LTD** by
its duly authorised officer, in the
presence of:



Signature of officer

DHIRENDRA SHANTILAL

Name



Signature of witness

BEW Lewis

Name

Date: 31/7/18