



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Tesa Group Pty Ltd**  
(AG2022/4915)

## **TESA GROUP - ENTERPRISE AGREEMENT 2022**

Coal industry

DEPUTY PRESIDENT EASTON

SYDNEY, 6 JANUARY 2023

*Application for approval of the TESA Group - Enterprise Agreement 2022.*

[1] Tesa Group Pty Ltd (**the Employer**) has made an application for the approval of the *TESA Group - Enterprise Agreement 2022* (**the Agreement**). The application was made under s.185 of the *Fair Work Act 2009* (**the Act**). The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings, a copy of which are attached as Annexure A to this decision. The undertakings can be accepted under s.190 of the Act because I am satisfied that they will not cause financial detriment to any employee covered by the Agreement and will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the agreement pursuant to s.191 of the Act.

[3] Subject to the Employer's undertakings, I am satisfied that each relevant requirement in sections 186, 187, 188 and 190 of the Act has been met.

[4] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[5] I note that two provisions within Clause 17 – Public Holidays are potentially inconsistent with the National Employment Standards (**NES**). I am satisfied that the undertakings provided by the Employer resolve these NES issues.

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 13 January 2023. The nominal expiry date of the Agreement is 6 January 2025.



DEPUTY PRESIDENT

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## Annexure A

**IN THE FAIR WORK  
COMMISSION**

*Fair Work Act 2009 (Cth) ("FW Act")*

**Matter number:** AG2022/4915

**Employer:** TESA Group Pty Ltd and TESA Mining (NSW)  
Pty Ltd (**Employer**)

**Application:** Section 185 – Application for approval of a  
single enterprise agreement, namely the  
TESA Group - Enterprise Agreement 2022  
(**Agreement**)

**Authorised representative:** Mike Zoetbrood  
Industrial Relations Manager

### **Undertaking- Section 190**

For and on behalf of the Employer I, Mike Zoetbrood


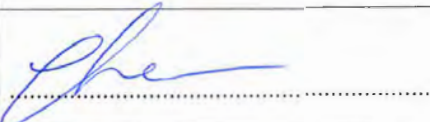
1. declare that I have:
  - a. authority to give this undertaking on behalf of the Employer,
  - b. sought the views of all bargaining representatives for this undertaking pursuant to s 190(4) of the FW Act,
2. understand that each undertaking is to be taken to be a term of the Agreement,
3. acknowledge that:
  - a. The Model Flexibility Clause will be applied.
4. give the following undertaking/s with respect to the Agreement:
  - a. That the Stand Down provision at clause 27 will not be applied as a result of refusal of duty by an employee.
  - b. That the Stand Down clause will be only be applied for reasons for which the Company cannot be reasonably held responsible consistent with section 524 of the Fair Work Act.
  - c. That notwithstanding clause 17, agreement to substitute a public holiday will only be made with an individual employee.
  - d. That the following wording at clause 17.1

*... unless the employee, without good and sufficient reason, fails to work on the employee's:*

- a. Last working day immediately before the holiday; or
  - b. First working day after the holiday;
- in which case the employee is not entitled to payment for such holiday.

shall have no effect.

- e. That a part-time Trainee shall be paid no less than \$24.28/hour or the applicable hourly rate at clause 4.2 of Schedule E of the Miscellaneous Award, whichever is the greater.
- f. That a trainee engaged on an annualised salary shall be better off than they would under this Agreement.
- g. That a casual Employee will be paid a minimum 4 hours for each engagement.
- h. That an Employee shall be entitled to a paid meal break of at least 30 minutes without deduction of pay for each 5 hours worked during a rostered shift.

Date signed:	8 <sup>th</sup> December 2022
For and on behalf of the Employer by: [In accordance with s.190(5) of the FW Act]	Mike Zoetbrood
Signature:	
Witness name:	ERIN LEITH
Witness signature:	

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

**and**

**TESA Group**

**TESA GROUP**

**ENTERPRISE  
AGREEMENT  
2022**

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

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## **PART 1 APPLICATION AND OPERATION**

### **1. Title**

This Agreement is to be known as the:

***TESA GROUP - Enterprise Agreement 2022***

### **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)

(hereinafter referred to as "the Company")

and

All employees of the Company engaged in one of the classifications 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 ("the 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 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 11.1 of this Agreement in respect of production and engineering work (as defined by the *Black Coal Mining Industry Award 2020*) performed at the Company's coal mining clients' premises in the region covered by the Northern District Coal Fields in New South Wales.

This Agreement does not apply to staff or work performed in underground mining.

**3.3** To the extent that any previous industrial instrument applied to the parties, 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 the Fair Work Commission [“FWC”] and shall have a nominal expiry two years from the date the agreement is approved by the FWC

#### **5. Incorporation of Award Terms and National Employment Standards**

This Agreement incorporates the National Employment Standards (NES) and the terms of the *Black Coal Mining Industry Award 2020 (as at the Agreement commencement date)*, 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 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 the appropriate rate outlined in Clause 11.2 plus an additional twenty five per cent (25%) loading.

Overtime shall be paid at the appropriate penalty rate, excluding casual loading.

The payment of this 25% casual loading is in lieu of all forms of paid leave (excluding LSL) and other permanent employment entitlements.

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.

The Company recognises that on occasion casual employees may not be available for shifts offered. The Company manages a forecasted roster for our clients and as such requires reasonable notice of planned unavailability to ensure minimal disruption to client operations. Casual employees are encouraged to provide as much notice as possible notice of planned unavailability. There is no requirement for casual employees to complete leave forms, except when applying to take long service leave.

#### **8.4 Casual Conversion**

Casual Conversion is provided for by the NES except as set out in this clause.

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 to request to be converted from a casual employee to a permanent employee.

Requests under this clause are subject to a satisfactory service record and availability of permanent positions.

After 12 months continuous employment a casual employee will be offered permanent employment if:

- For the past 6 months the employee has worked a regular pattern of hours on an ongoing basis; and
- The employee's regular pattern of hours could continue as a permanent employee, without significant change.

Offers of conversion will not be made where employees are not eligible or if there are reasonable business grounds for an offer to not be made.

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.

Full time and part time employees will make up a minimum of 30% of the workforce.

#### **8.5 Fixed Term and Maximum Term Employment**

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

Fixed term and maximum 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**

A full time or part time 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:

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.

Notice of termination paid in lieu will be paid as if the employee had worked.

This clause shall not apply to casual 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.

Where termination occurs due to redundancy the employee will be entitled to a minimum of four weeks' notice of termination.

Redundancy Pay will be paid at the ordinary time rate of pay as set out in clause 11.2.

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.

The company will make genuine attempts at redeployment.

This clause does not apply to casual, fixed term or maximum 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 direct 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 than 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 a variety of operating circumstances at a level above that of a Mineworker Level 2.

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

## Mineworker Level 4

A Mineworker Level 4 is an employee assessed by the employer as competent to perform the required tasks in all relevant operating circumstances beyond the level of a Mineworker Level 3.

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

A Mineworker Level 4 employee may be a Leading Hand Tradesperson or supervisor.

### **11.2 Wages**

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

	2021 EA Rates as at expiry date	From the first full pay period on or after the date of approval by the employees <b>Total 6% increase</b>		12 months after the Agreement was approved by employees <b>4% increase</b>	
	Permanent Employees Hourly Rates	Permanent Employees Hourly Rates	Casual Employees Hourly Rates	Permanent Employees Hourly Rates	Casual Employees Hourly Rates
Mineworker Level 1	\$25.75	\$27.30	\$34.12	\$28.39	\$35.48
Mineworker Level 2	\$25.95	\$27.51	\$34.38	\$28.61	\$35.76
Mineworker Level 3	\$27.68	\$29.34	\$36.68	\$30.51	\$38.14
Mineworker Level 4	\$29.94	\$31.74	\$39.67	\$33.01	\$41.26

#### **11.2 a) Pay increases**

- i. From the date of approval by the majority of employees, the hourly rate will be increased for a total wage increase of 6% on the 2021 Agreement rates as at its expiry date.
- ii. On the first full pay period on or after 12 months after the agreement is approved by the employees, wages will be increased by 4%.

11.2 b) Allowances will be paid in accordance with the Award except where otherwise indicated in the Agreement.

A \$2.24 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.

**11.2.1** 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 by electronic funds transfer in the next full week’s pay run.

**11.3 Implementation of All Up Rates**

The Company may implement All Up Rates of pay to apply at a particular client site.

In circumstances where an All Up rate of pay is implemented in accordance with clause 11.3 the All Up rate of pay will not result in an employee being paid less than they would otherwise be entitled to under the Agreement.

Indicative All Up Rates of Pay are provided for in this clause, as set out below, but may vary depending on the client, roster and site.

Classification	Roster	From the first full pay period on or after the date of approval by the employees	From the first full pay period on or after the date of approval by the employees
		Hourly All Up Rates - Permanent Rates	Hourly All Up Rates - Casual Rates
Mineworker Level 1	4 Panel 12hr Rotating	\$42.45	47.91
Mineworker Level 2	4 Panel 12hr Rotating	\$42.77	\$48.28
Mineworker Level 3	4 Panel 12hr Rotating	\$45.63	\$51.50
Mineworker Level 4	4 Panel 12hr Rotating	\$49.35	\$55.70
Mineworker Level 1	4 Panel 12.33hr Rotating	\$42.88	\$48.19
Mineworker Level 2	4 Panel 12.33hr Rotating	\$43.22	\$48.57
Mineworker Level 3	4 Panel 12.33hr Rotating	\$46.10	\$51.80
Mineworker Level 4	4 Panel 12.33hr Rotating	\$49.86	\$56.03
Mineworker Level 1	4 Panel 12.5hr Rotating	\$43.09	\$48.33

Mineworker Level 2	4 Panel 12.5hr Rotating	\$43.43	\$48.70
Mineworker Level 3	4 Panel 12.5hr Rotating	\$46.32	\$51.95
Mineworker Level 4	4 Panel 12.5hr Rotating	\$50.11	\$56.19

## **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 within 14 days after it is agreed to 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
	80% of Mineworker Level 1	90% of Mineworker Level 1

The following part-time trainees will be entitled to a base hourly rate of \$24.00:

- a trainee who is 5 or more years out of school and has completed at least year 10;
- a trainee who is 4 or more years out of school and has completed at least year 11; and
- a trainee who is 3 or more years out of school and has completed at least year 12.

The Employer will not employ any person to undertake a Certificate 4 Traineeship.

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

The parties to the Agreement will endeavour to complete Certificate III Traineeships in 12 month period.

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 Retention Bonus**

The company is committed to exploring employee retention initiatives. During the life of this Agreement the company will, at its discretion, pay a retention bonus to employees in addition to their remuneration where such a bonus is negotiated with the relevant client.

## **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 or Winter Jacket (available all year)

The Company must supply appropriate work boots. Alternatively, employees may purchase their own work boots and the Company will reimburse the employee up to \$75, on the provision of proof of purchase.

Upon request, pregnant employees will be provided with maternity work clothing.

## **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 at ordinary time rates, as set out in clause 11.2, for the duration of the re-induction, subject to the provisions of Part 4 of the Agreement. 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) E-Learn**

Employees that are required to complete E-Learning (site specific) for the purpose of continuation of engagement at that client site, to be completed outside of work time, will be paid 1 hour at overtime. For the avoidance of doubt, this shall be double time on the employee's hourly base rate of pay in clause 11.2.

### **c) 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**

Where an employee is required to attend a Safety Talk employees will be paid at double time for the duration of the Safety Talk. Safety talks are contained to a limit of 15 minutes in duration.

## **11.10 Periodic Medical Payments (Order 43)**

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 medicals undertaken as part of a pre-employment process).

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

## **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 10.5 % 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 Mine Super unless an employee nominates another fund.

**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.

## **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. Each rostered shift will be allocated an equal number of ordinary hours and for those ordinary hours to commence from the start of each rostered shift.

#### **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 12.67 hours.

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, or a longer period where the roster is made available by the Company's client.

#### **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, so long as those payments and provisions are not less than what an employee would receive under this Agreement.

## **16 Weekend Work**

### **16.1 Saturday Work**

All ordinary hours of work on a Saturday shall be paid at the rate of double time 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 public 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 Sunday
- 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

A full time or part time employee who is not required to work on a public holiday which would otherwise have been a working day for that employee will be paid rostered ordinary hours for that day at the employee's classification rate, as outlined in clause 11.2, unless the employee, without good and sufficient reason, fails to work on the employee's:

- a. Last working day immediately before the holiday; or
  - b. First working day after the holiday;
- in which case the employee is not entitled to payment for such holiday.

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 treble time. A casual employee working overtime on a recognised holiday shall be paid at treble time. For the avoidance of doubt, casual loading will not be payable on a public holiday.

In addition to the above, an employee will be paid the following additional shift penalties for working on a public holiday.

<b>Type of shift</b>	<b>Additional penalty (% of hourly rate)</b>
Ordinary hours – Afternoon shift / rotating night shift	30
Ordinary hours – Permanent night shift	50
Overtime hours for 6 or 7 day roster employee – Afternoon shift / rotating night shift	30
Overtime hours for 6 or 7 day roster employee – Permanent night shift	50

Nothing in this clause 17.1 will apply in a manner that is inconsistent with an employee's entitlement to a public holiday under the National Employment Standards.

## **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

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



Annual leave will accrue progressively at the rate prescribed above

#### **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.

#### **18.5 Shut Downs**

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 affected 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

#### **18.6 Payment on Termination of Employment**

On termination, unused accrued annual leave will be paid as if the leave had been taken.

#### **18.7 When Annual Leave may be Taken**

Annual leave is taken by agreement. The company will not unreasonably refuse a request for annual leave. Leave requests may be refused in circumstances where approval of the annual leave would result in inadequate shift coverage, for example, when annual leave has already been approved for a number of employees on a particular date.

Employees with excess annual leave accrual maybe required to take annual leave in accordance with the provisions of the NES.

The Company manages a forecasted roster for our clients and as such requires 4 weeks' notice, where practicable, of planned unavailability to ensure minimal disruption to client operations.

#### **Christmas and Easter Leave**

In order to ensure the fair allocation of annual leave at Christmas (24 December – 2 January) and Easter (Good Friday – Easter Tuesday) annual leave for these periods will be allocated by ballot.

- The ballot will be conducted by the company with a minimum of two employee witnesses present.

- Employees who are selected in the ballot will be ineligible to participate in the ballot the following year.
- The ballot will occur no later than 2 months before the relevant period.
- Participation in the ballot is not mandatory. Employees who wish work over the relevant period should notify the Company prior to the ballot that they do not wish to be included.
- The Company will communicate the date of the ballot to employees at least 2 weeks before it is conducted.

## **18.8 Casual employees**

Casual employees are not entitled to annual leave.

Casual employees are not required to complete leave forms (except for long service leave), however, are encouraged to provide as much notice as possible of planned unavailability.

## **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 or an unexpected emergency affecting the member.

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

### **19.1 Entitlement to Personal Leave**

A full time employee is entitled to 105 hours of Personal /Carers leave (inclusive of the employee's NES entitlement) on commencing employment and on each anniversary of commencement. Any personal leave which is not taken by an employee must accumulate 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 of the taking of Personal/ Carer's leave as soon as practicable (in accordance with the procedure nominated by the Company).

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.

This clause does not apply to casual employees.

### **19.3 Payment for Personal / Carer's Leave**

Payment will be at the hourly rate for the ordinary hours at the relevant base rate of pay, as outlined in clause 11.2, for the shift missed 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 or affected by an unexpected emergency. 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**

An employee whose employment is terminated:

- By retrenchment;
- By retirement at or after age 60;
- By the employer because of ill health; or
- By Death.

Must, if the employee has 70 or more hours of untaken personal leave entitlement, be paid for that entitlement at the employee's base rate of pay.

## **20 Compassionate Leave**

Compassionate Leave is provided for by the National Employment Standards and as stated in this Clause.

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 develops 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.

For casual employees, compassionate leave is unpaid leave.

## **21 Witness Payment**

Where an industrial issue is referred to the FWC (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**

Employees are entitled to Long Service Leave in accordance with the legislated standard for the Black Coal Industry.

Where an employee requests to take long service leave the company will respond as soon as practicable, but no later than 14 days after the application is made, the Company must provide the employee a response, as follows:

- a. Stating whether or not the company grants the long service leave; and
- b. If the employer refuses to grant the long service leave, giving details of the reasons for the refusal

The company may refuse to grant long service leave on reasonable business grounds.

### **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.

An employee taking long service leave shall be paid at the employee's classification either:

- (a) their All Up rate; or
- (b) their base rate of pay plus relevant penalties for the shifts taken

up to a maximum of 35 hours per week.

## **24 Parental Leave**

Parental Leave will be in accordance with the NES as prescribed in the 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 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 relevant rate of pay in accordance with clause 11.2.

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 had the employee been on paid personal leave as per the relevant rate in clause 11.2 at the date of the injury (provided the latter amount is greater than the former amount), or in the case of casual employees at the applicable base rate of pay for the average hours per week for three (3) months prior or if the period of employment is less than three (3) months then the entire period of the employment.

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.

## **28. 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 at the base rate of pay.

Casual employees will be paid 4 hours pay if the stand down occurs within the first 4 hours of the shift.

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**

### **29. 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 the Fair Work Commission.
- (e) The Fair Work Commission may deal with the dispute in 2 stages:



- (i) The Fair Work Commission 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 the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
  - arbitrate the dispute; and
  - make a determination that is binding on the parties

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

A decision that the Fair Work Commission 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 the Fair Work Commission in accordance with this term.

### **30. 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 the change is likely to have a significant effect on the employees; or
  - (ii) proposes to introduce a change to the regular roster or ordinary hours of work of employees.
- (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.

*Change to regular roster or ordinary hours of work*

- (k) For a change referred to in paragraph (1)(b):
- (i) the employer must notify the relevant employees of the proposed change; and
  - (ii) subclauses (l) to (p) apply.
- (l) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (m) 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.
- (n) As soon as practicable after proposing to introduce the change, the employer must:
- (i) discuss with the relevant employees the introduction of the change; and
  - (ii) for the purposes of the discussion—provide to the relevant employees:
    - (1) all relevant information about the change, including the nature of the change; and
    - (2) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (3) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (iii) 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).
- (o) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (p) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (q) In this term:

***relevant employees*** means the employees who may be affected by a change referred to in subclause (1).

### **31. Union Activities**

Elected representatives will be allowed unpaid absences to attend Union Activities off site upon request provided the following conditions are met:

- There is a maximum of five days per year for each representative of leave available; and
- At least 4 weeks' notice is given to the supervisor in writing.

Subject to operational requirements and the provision of reasonable notice in writing, elected representatives will be released from normal duties without loss of pay to:

- Attend enterprise agreement negotiations
- To hold communication meetings of employees on the site that the elected representative works at where such meetings are given prior approval by the employer and the work site.

Subject to operational requirements and the provision of four weeks' notice, where elected representatives are Lodge Officers of the Union they will be released from normal duties without pay to participate in meetings required in their wider representative role as officers of the Union such as District Meetings, National Convention, Board of Management or Council.

There may be no more than two (2) employees elected to represent employees covered by this agreement for the purposes of this clause.

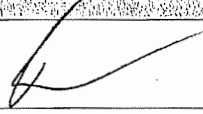

## Signatures

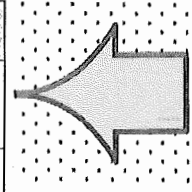
Signed for and on behalf of TESA Group Pty Ltd	
Authorised Officer signature:	
Name of TESA Representative	Joel Cribb
Authority to Sign (Position/Title)	General Manager - Mining East
Address of TESA Group	157 - 159 John Street, Singleton
Date	22/11/2022
In the presence of:	
Witness signature:	
Name of Witness	Lisa Miller
Date	22/11/2022
Signed for and on behalf of TESA Mining (NSW) Pty Ltd	
Authorised Officer signature:	
Name of TESA Representative	Joel Cribb
Authority to Sign (Position/Title)	General Manager - Mining East
Address of TESA Group	157 - 159 John Street, Singleton
Date	22/11/2022
In the presence of:	
Witness signature:	
Name of Witness	Lisa Miller
Date	22/11/2022

On behalf of employees of TESA Group Pty Ltd

Signed by Employee Representative	
Signature:	<i>Schoeman</i>
Name of Employee Representative:	<i>Susanna Schoeman.</i>
Position/Title:	<i>Track Operator</i>
Address:	<i>99A BARBER STREET, Gunnedah NSW.</i>
Date:	<i>23-11-2022</i>
Witness signature:	<i>S. Longworth</i>
Name of Witness	<i>Sarah Longworth</i>
Date:	<i>23-11-2022</i>

On behalf of employees of TESA Mining (NSW) Pty Ltd

Signed by Employee Representative	
Signature:	
Name of Employee Representative:	Ben Boyie
Position/Title:	Shotline
Address:	47 Burnwood Rd Burnwood WA 6100
Date:	8.12.22
Witness signature:	
Name of Witness	ANTHONY MUI
Date:	8/12/22



**SIGN  
HERE**

## ANNEXURE A

### Mineworker Level 3 – 12hr roster Rotating Day & Night Shift (168 hours per roster cycle)

#### ORDINARY HOURS OF WORK DEFINITION

35 ordinary hours per week averaged over the roster cycle

#### BREAKDOWN

4 week cycle

4 weeks x 35 ordinary hours = 140 ordinary hours

14 shifts per cycle

140 ordinary hours / 14 shifts = 10 ordinary hours per shift

Rostered Double Time = 2hrs per shift = 28hrs per roster cycle

#### PERMANENT

	Week Day	Week Night	Weekend Day	Weekend Night	Public Holiday Day	Public Holiday Night	OT Day	OT Night	Totals Per Cycle
Hourly Rate \$	29.34	33.99	58.68	63.33	88.02	97.07	58.68	63.33	
Total Hours per Cycle	44.46	50.00	20.00	20.00	2.77	2.77	14.00	14.00	168
Total Pay per Cycle \$	1304.49	1699.57	1173.63	1266.64	243.82	268.90	821.54	886.65	\$7,665.24

All Up Pay Rate = \$ 45.63

#### CASUAL

	Week Day	Week Night	Weekend Day	Weekend Night	Public Holiday Day	Public Holiday Night	OT Day	OT Night	Totals Per Cycle
Hourly Rate \$	36.68	41.33	66.02	70.67	88.02	97.07	58.68	63.33	
Total Hours per Cycle	44.46	50.00	20.00	20.00	2.77	2.77	14.00	14.00	168
Total Pay per Cycle \$	1630.61	2066.33	1320.34	1413.35	243.82	268.90	821.54	886.65	\$8,651.53

All Up Pay Rate = \$ 51.50



**Mineworker Level 3 – 12.33hr roster Rotating Day & Night Shift (172.62 hours per roster cycle)**

**ORDINARY HOURS OF WORK DEFINITION**

35 ordinary hours per week averaged over the roster cycle

**BREAKDOWN**

4 week cycle

4 weeks x 35 ordinary hours = 140 ordinary hours

14 shifts per cycle

140 ordinary hours / 14 shifts = 10 ordinary hours per shift

Rostered Double Time = 2.33hrs per shift = 32.62hrs per roster cycle

**PERMANENT**

	Week Day	Week Night	Weekend Day	Weekend Night	Public Holiday Day	Public Holiday Night	OT Day	OT Night	Totals Per Cycle
Hourly Rate \$	29.34	33.99	58.68	63.33	88.02	97.07	58.68	63.33	
Total Hours per Cycle	44.30	50.00	20.00	20.00	2.85	2.85	16.31	16.31	<b>172.62</b>
Total Pay per Cycle \$	1299.80	1699.57	1173.63	1266.64	250.86	276.66	957.10	1032.95	<b>\$7,957.21</b>

**All Up Pay Rate = \$ 46.10**

**CASUAL**

	Week Day	Week Night	Weekend Day	Weekend Night	Public Holiday Day	Public Holiday Night	OT Day	OT Night	Totals Per Cycle
Hourly Rate \$	36.68	41.33	66.02	70.67	88.02	97.07	58.68	63.33	
Total Hours per Cycle	44.30	50.00	20.00	20.00	2.85	2.85	16.31	16.31	<b>172.62</b>
Total Pay per Cycle \$	1624.75	2066.33	1320.34	1413.35	250.86	276.66	957.10	1032.95	<b>\$8,942.32</b>

**All Up Pay Rate = \$ 51.80**

**Mineworker Level 3 – 12.5hr roster Rotating Day & Night Shift (175 hours per roster cycle)**

**ORDINARY HOURS OF WORK DEFINITION**

35 ordinary hours per week averaged over the roster cycle

**BREAKDOWN**

4 week cycle

4 weeks x 35 ordinary hours = 140 ordinary hours

14 shifts per cycle

140 ordinary hours / 14 shifts = 10 ordinary hours per shift

Rostered Double Time = 2.5hrs per shift = 35hrs per roster cycle

**PERMANENT**

	Week Day	Week Night	Weekend Day	Weekend Night	Public Holiday Day	Public Holiday Night	OT Day	OT Night	Totals Per Cycle
Hourly Rate \$	29.34	33.99	58.68	63.33	88.02	97.07	58.68	63.33	
Total Hours per Cycle	44.23	50.00	20.00	20.00	2.89	2.89	17.50	17.50	175
Total Pay per Cycle \$	1297.74	1699.57	1173.63	1266.64	253.94	280.06	1026.93	1108.31	\$8,106.83

**All Up Pay Rate = \$ 46.32**

**CASUAL**

	Week Day	Week Night	Weekend Day	Weekend Night	Public Holiday Day	Public Holiday Night	OT Day	OT Night	Totals Per Cycle
Hourly Rate \$	36.68	41.33	66.02	70.67	88.02	97.07	58.68	63.33	
Total Hours per Cycle	44.23	50.00	20.00	20.00	2.89	2.89	17.50	17.50	175
Total Pay per Cycle \$	1622.18	2066.33	1320.34	1413.35	253.94	280.06	1026.93	1108.31	\$9,091.43

**All Up Pay Rate = \$ 51.95**

## Schedule 2.2—Model flexibility term

(regulation 2.08)

### Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (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
  - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
  - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the employer and employee agree in writing—at any time.

**IN THE FAIR WORK  
COMMISSION**

*Fair Work Act 2009 (Cth) ("FW Act")*

**Matter number:** AG2022/4915

**Employer:** TESA Group Pty Ltd and TESA Mining (NSW)  
Pty Ltd (**Employer**)

**Application:** Section 185 – Application for approval of a  
single enterprise agreement, namely the  
TESA Group - Enterprise Agreement 2022  
(**Agreement**)

**Authorised representative:** Mike Zoetbrood  
Industrial Relations Manager

**Undertaking- Section 190**

For and on behalf of the Employer I, Mike Zoetbrood

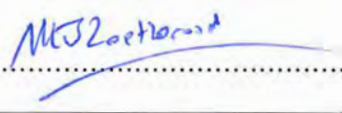
1. declare that I have:
  - a. authority to give this undertaking on behalf of the Employer,
  - b. sought the views of all bargaining representatives for this undertaking pursuant to s 190(4) of the FW Act,
2. understand that each undertaking is to be taken to be a term of the Agreement,
3. acknowledge that:
  - a. The Model Flexibility Clause will be applied.
4. give the following undertaking/s with respect to the Agreement:
  - a. That the Stand Down provision at clause 27 will not be applied as a result of refusal of duty by an employee.
  - b. That the Stand Down clause will be only be applied for reasons for which the Company cannot be reasonably held responsible consistent with section 524 of the Fair Work Act.
  - c. That notwithstanding clause 17, agreement to substitute a public holiday will only be made with an individual employee.
  - d. That the following wording at clause 17.1

*... unless the employee, without good and sufficient reason, fails to work on the employee's:*

- a. Last working day immediately before the holiday; or
  - b. First working day after the holiday;
- in which case the employee is not entitled to payment for such holiday.

shall have no effect.

- e. That a part-time Trainee shall be paid no less than \$24.28/hour or the applicable hourly rate at clause 4.2 of Schedule E of the Miscellaneous Award, whichever is the greater.
- f. That a trainee engaged on an annualised salary shall be better off than they would under this Agreement.
- g. That a casual Employee will be paid a minimum 4 hours for each engagement.
- h. That an Employee shall be entitled to a paid meal break of at least 30 minutes without deduction of pay for each 5 hours worked during a rostered shift.

Date signed:	8 <sup>th</sup> December 2022
For and on behalf of the Employer by: [In accordance with s.190(5) of the FW Act]	Mike Zoetbrood
Signature:	
Witness name:	ERIN LEITH
Witness signature:	