



DECISION

Fair Work Act 2009

s.185 - Application for approval of a greenfields agreement

Protech Mining and Maintenance Pty Ltd
(AG2021/5789)

PROTECH QUEENSLAND COAL AGREEMENT 2021

Mining industry

COMMISSIONER SPENCER

BRISBANE, 8 JULY 2021

Application for approval of the Protech Queensland Coal Agreement 2021.

[1] An application has been made for approval of a greenfields agreement known as the *Protech Queensland Coal Agreement 2021* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Protech Mining and Maintenance Pty Ltd (the Applicant). The Agreement is a single enterprise agreement.

[2] Subject to matters that have been addressed by way of undertakings, I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met. In particular, I am satisfied that the Mining and Energy Division of the Construction, Forestry, Maritime, Mining and Energy Union (the CFMEU) are 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] As noted, pursuant to s.190(3), I have accepted undertakings from the employer. In accordance with ss.191(1) and 201(3) of the Act the undertakings are taken to be a term of the Agreement. A copy of the undertakings is attached to the Agreement.

[4] Pursuant to s.53(2)(b) of the Act I note the Agreement was made with CFMEU and that the Agreement covers this organisation.

[5] The Agreement is approved and, in accordance with s.54(1) of the Act, will operate from 15 July 2021. The nominal expiry date of the Agreement is 15 July 2025.



COMMISSIONER

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Protech Queensland Coal Agreement 2021

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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 Title

1.1 This will be called the *Protech Queensland Coal Agreement 2021* (the Agreement).

2 Scope of this Agreement and Parties Covered

2.1 The parties to this Agreement are:

2.1.1 Protech Mining and Maintenance Pty Ltd (ABN 91 150 548 815) (the Company);

2.1.2 Protech's Group Training Organisation registered as Protech Personnel (NQ) Pty Ltd (ABN 36 145 085 070) (the Company) ; and

2.1.3 All Field Employees who are employed by the Company:

- i. In Queensland; and
- ii. Are engaged in any classifications specified in Clause 15 of this Agreement;
- iii. Who fall within the definition of a "coal mining employee" as that term is defined in Clause 4 of the Black Coal Mining Industry Award 2010; and
- iv. Whose employment would have but for the operation of this Agreement been covered by the Black Coal Mining Industry Award 2010 but for the operation of this Agreement (the "Field Employees").

3 Duration of Agreement

3.1 This Agreement commences operation 7 days after approval by the Fair Work Commission (FWC).

3.2 The Agreement will have a nominal expiry of four (4) years after the approval notice is issued by the FWC.

4 Scope and Intent

4.1 This Agreement is read in conjunction with the Black Coal Mining Industry Award 2010, as varied from time to time. Should there be an inconsistency between this Agreement and Black Coal Mining Industry Award 2010, then the terms of the Agreement shall prevail to the extent of the inconsistency.

4.2 Where the Agreement is silent, the terms of the Black Coal Mining Industry Award 2010 shall apply, in so far as the terms have application.

4.3 This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

4.4 The rates of pay, terms and conditions in this Agreement represent the minimum that will be paid to a Field Employee. The Company may pay Field Employees a higher rate of pay or more attractive terms. Given the nature of the Field work, any increase above the minimums may vary from assignment to assignment and will be entirely at the discretion of the Company.

5 Definitions

"The Act" shall mean the *Fair Work Act 2009 (Cth)* as amended from time to time.

"Agreement" shall mean the *Protech Queensland Coal Agreement 2021*.

"Client" shall mean any client of the Company to who Employees are on-hired to from time to time.

"The Company" shall mean Protech Mining and Maintenance Pty Ltd (ABN 91 150 548 815) and Protech's Group Training Organisation registered as Protech Personnel (NQ) Pty Ltd (ABN 36 145 085 070).

"FWC" shall mean the Fair Work Commission or any other body that replaces it.

"Infectious diseases/dangerous medical condition" shall mean disorders caused by pathogenic microorganisms, such as bacteria, viruses, parasites or fungi that can be spread directly or indirectly (vector-borne) from one individual to another. For the purposes of this Agreement infectious diseases/dangerous medical conditions clause shall only apply in situations of an outbreak of a declared pandemic by the World Health Organisation or the Australian Government.

"Modern Award" shall mean the Black Coal Mining Industry Award 2010, as varied from time to time.

"NES" shall mean National Employment Standards, as varied from time to time.

"Ordinary hours of work" shall mean means an average of 35 hours per week over an employee's roster cycle. For the avoidance of doubt, "ordinary hours" do not include overtime hours.

"Field Employees" shall mean all Company Field Employees who are placed on assignment with a Client of the Company and are covered by this Agreement.

"Overtime hours" means those hours worked outside of an Employee's ordinary hours.

"PPE" shall mean personal protective equipment.

"Roster" means any arrangement of rostered hours worked by a Field Employee.

"Rostered hours" means ordinary hours of work and rostered overtime.

"Roster cycle" is made up of a number of roster hours/cycles to arrive at the same day and shift on which the cycle started.

"Seven Day Roster Field Employee" means a Field Employee who may be rostered to work shifts on any of the seven days of the week.

"Six Day Roster Field Employee" means a Field Employee who, over a roster cycle, is rostered to work shifts, the hours of which occur during any six consecutive 24 hour periods in a span of seven consecutive 24 hour periods. The roster must include a non-working period of at least 24 consecutive hours at the same time each week.

Types of Employment

"Casual Field Employee" shall mean a Field Employee who has no guarantee of ongoing or continued work with the Company and is not eligible for paid leave entitlements under this Agreement. A Casual Field Employee/s is entitled to a minimum payment of four (4) hours work per engagement. Casual Field Employees will be paid a 25% casual loading which is in lieu of all paid leave entitlements (annual leave, annual leave loading, personal leave, paid community service leave, notice of termination, public holidays not worked and redundancy entitlements).

"Full-time Field Employees" shall mean a Field Employee who has been notified in writing of their full-time employment status prior to commencement. A full time Field Employee shall work an average of no less than thirty-five (35) ordinary hours per week over a rostered cycle. A full time Field Employee will accrue annual leave and personal leave and will not be entitled to the 25% casual loading.

"Fixed Term Field Employee" shall mean a Field Employee engaged for a specific period of time or task. Fixed term contract employees are usually full-time or part-time employees. Fixed Term Employees will be entitled to the same wages, penalties and leave as permanent employees.

"Part time Field Employee" shall mean a Field Employee who has been notified in writing of their part time employment status prior to commencement. A part time Field Employee works an average of less than thirty-five (35) ordinary hours per week and the Field Employee has predictable hours of work. Part time Field Employees shall receive a pro rata, equivalent pay and conditions to those full time Field Employees. A part time Field Employee will accrue annual leave and personal leave and will not be entitled to the 25% casual loading.

6 Additional Claims

6.1 During the term of this Agreement, neither party pursue any further claims about any matter, which pertains to the employment relationship.

7 Types of Employment

7.1 Field Employees under this Agreement will be employed in one of the following categories of employment:

- 7.1.1 Casual Field Employee;
- 7.1.2 Full Time Field Employee;
- 7.1.3 Part Time Field Employee;
- 7.1.4 Apprentices and/or Trainee Field Employees (see Appendix 1);
- 7.1.5 Fixed Term engaged for a specific time/task;
- 7.1.6 Field Employees engaged for a specific project/site/assignment or workplace related task.

7.2 At the time of the Field Employees engagement, the Company will inform each Field Employee in writing of their status and anticipated term of their engagement by issuing the Letter of Engagement.

7.3 Probationary Employment

- 7.3.1 This clause does not affect any qualifying period set out by the Act.
- 7.3.2 This clause applies to Field Employees, other than casual Employees.
- 7.3.3 The first six (6) months of employment will be a probation period. During this period the Company may terminate an Employee's employment with 1 weeks' notice.
- 7.3.4 Continuing employment during and at the conclusion of the probationary period will depend on the Employee's performance being satisfactory. To ensure that Employees have an opportunity to rectify any performance issues they will be provided with regular performance feedback during the probationary period. As a minimum this will be at the completion of the second and fourth months of the probation period.

7.4 Casual Employment

- 7.4.1 A Casual Field Employee is one engaged and paid as such.
- 7.4.2 A Casual Field Employee will be paid the hourly rate of pay for the relevant classification as outlined in this agreement, in addition to a loading of 25% calculated on the ordinary rate of pay.
- 7.4.3 The Casual loading is in lieu of:
 - i. Annual Leave and Leave Loading entitlements;
 - ii. Personal Leave entitlements;
 - iii. Notice of Termination requirements;
 - iv. Redundancy entitlements; and
 - v. Other entitlements not applicable to Casual Field Employee, but does not include public holidays worked.
- 7.4.4 For the avoidance of doubt, casual loading is paid in lieu of entitlements, which do not apply to Casual Field Employees, having regard for the National Employment Standards.
- 7.4.5 The minimum engagement for a Casual Field Employee working ordinary hours will be four (4) hours on any one day that the Field Employee is placed on assignment.
- 7.4.6 The Company recognises that casual employees will suffer illness or otherwise be unavailable for work due to personal reasons. The company may reasonably request evidence to support unplanned unavailability. Such evidence may include doctors' certificate in the case of ill health.

7.5 Casual Conversion

- 7.5.1 A Field Employee engaged by the Company as a Casual Field Employee, other than an irregular Casual Field Employee, who has been engaged for a sequence of periods of employment under this Agreement during a period of three (3) months may request that their employment be converted to full time or part time employment.
- 7.5.2 An irregular Casual Field Employee is a Casual Field Employee who has been engaged to perform work on an occasional or non-systematic or irregular basis.
- 7.5.3 Any request made by the Field Employee under clause 7.5 must be in writing and provided to the Company.
- 7.5.4 Where a Casual Field Employee seeks to convert to full time or part time employment, the Company may agree to or refuse the request, but the request may only be refused on reasonable grounds.

- 7.5.5 Where the Company refuses a Casual Field Employee's request to convert, the Company must provide the Casual employee with the Company's reasons for refusal in writing within 21 days of the request being made.
- 7.5.6 Where it is agreed that a Casual Field Employee will have their employment converted to full time or part time employment as provided for in this clause, the Company and Field Employee must discuss and record in writing:
- i. the form of employment to which the Field Employee will convert – that is, full time or part time employment;
 - ii. if it is agreed that the Field Employee will become a part time Field Employee, the number of hours and the pattern of hours that will be worked, as set out in clause 7.7; and
 - iii. the date upon which the conversion will take effect.
- 7.5.7 Nothing in this clause obliges a regular Casual Field Employee to convert to full time or part time employment, nor permits the Company to require a regular Casual Field Employee to convert. For the avoidance of doubt a Field Employee will have the right to remain a casual employee if they so choose.
- 7.5.8 Nothing in this clause requires the Company to increase the hours of a regular Casual Field Employee seeking conversion to full time or part time employment.
- 7.5.9 Once a Casual Field Employee has elected to become and has been converted to a full time or part time Field Employee, the Field Employee may only revert to Casual employment by written agreement with the Company.
- 7.5.10 Should a Casual Field Employee wish to remain casual that their hourly rate includes a 25% casual loading, which is paid in lieu of annual leave, annual leave loading, personal leave entitlements, notice of termination requirements, paid redundancy entitlements and in recognition of the itinerant nature of casual work. For the avoidance of doubt the decision of an employee to not to request to convert will result in the employee remaining a 'casual Field employee' and is an acceptance that the casual loading is paid in lieu of any entitlements which may have been deemed to apply to the employee, should they subsequently be classified as "other than casual".
- 7.5.11 Any disagreement as to the operation of this clause shall be dealt with in accordance with the Disputes Settlement Provisions of this Agreement.

7.6 Full Time Employment

- 7.6.1 A full time Field Employee works an average of thirty five (35) ordinary hours per week.
- 7.6.2 A full time Field Employee will accrue annual leave and personal leave in accordance with Clause 24 and 25 of this Agreement.

7.7 Part Time Employment

- 7.7.1 A Part Time Field Employee is employed to work an average of fewer than thirty five (35) ordinary hours per week and has reasonably predictable hours of work.
- 7.7.2 For each ordinary hour worked, a part time Field Employee will be paid no less than the ordinary time rate for the relevant classification and pro-rata entitlements for those hours. Part time Field Employees will be informed of their ordinary hours of work and the starting and finishing times.
- 7.7.3 Before commencing as a part time Field Employee, the Company and the Field Employee will agree in writing:
- i. that the Field Employee may work part time;
 - ii. the hours to be worked by the Field Employee, the days upon which the hours will be worked and the commencing times for the work;
 - iii. the classification applying to the work to be performed by the Field Employee; and
 - iv. the period of part time Field employment.
- 7.7.4 The terms of the part time agreement may be varied, in writing, by consent.
- 7.7.5 A copy of the part time agreement and any variation to it will be provided to the Field Employee by the Company.
- 7.7.6 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in Clause 22 - Overtime and Penalty Rates.
- 7.7.7 A part-time Employee will be paid per hour 1/35th of the weekly rate prescribed for the classification in which the Employee is engaged.
- 7.7.8 A part time Field Employee is entitled to accrue leave on a pro-rata basis. A part time Field Employee will accrue pro-rata annual leave and pro-rata personal leave.

7.8 Fixed Term Employment

- 7.8.1 Field Employees engaged on fixed term employment will have this specified in their Letter of Engagement.
- 7.8.2 Unless this Agreement otherwise, Fixed Term Field Employees shall receive the wages and conditions of Full-Time Field Employees for the duration of their assignment.
- 7.8.3 Fixed term Employees shall accrue annual leave as per Full-time Employees.
- 7.8.4 A fixed term employee shall also not be entitled to notice of termination and redundancy as outlined in Clauses 8 and 9 of the Agreement.

7.9 Specific project/site/assignment or workplace related task

- 7.9.1 Field Employees engaged on specific project/site/assignment or workplace related task will have this specified in their Letter of Engagement.
- 7.9.2 A specific project/site/assignment contract contains a 'sunset' date on which both parties agree that employment will end.
- 7.9.3 A workplace related task contract is linked to the completion of a specific task and at the completion of this task that employment will end.
- 7.9.4 Field Employees engaged under specific project/site/assignment or workplace related task are not entitled to notice of termination and redundancy payouts in accordance with the Act.
- 7.9.5 Field Employee specific project/site/assignment or workplace related task may be extended by mutual agreement.
- 7.9.6 A specific project/site/assignment or workplace related task Field Employee is entitled to accrue leave on a pro-rata basis. A specific project/site/assignment or workplace related task Field Employee will accrue pro-rata annual leave and pro-rata personal leave.

8 Termination of Employment

8.1 Notice of Termination by an Employee

- 8.1.1 Full-time and Part-time Field Employee must give one week's notice to terminate employment or forfeit to the Company one week's pay, based on projected roster, instead of giving notice.

8.2 Notice of Termination by the Company

- 8.2.1 For the termination of employment initiated by the Company the period of notice to be provided by the Company is:

Employee's period of continuous service with the Company	Notice period required
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

The period of notice is to be increased by 1 week where the permanent Field Employee is over 45 years of age and has completed 2 years of continuous service with the Company at the time of giving of the notice. This additional week only applies to notice given by the Company.

8.2.2 The Company may, at its discretion, elect to pay an Employee the full wages in lieu of notice the amount the Company would have been liable to pay to the Employee had the employment continued until the end of the notice period.

8.2.3 This Clause does not apply to:

- i. A Field Employee whose employment is terminated because of serious misconduct; or
- ii. Field Employees engaged on a Fixed Term basis once the fixed term has come to an end;
- iii. Field Employees engaged on a Specific task basis once the task has been completed;
- iv. a Casual Field Employee.

8.3 Accrued Leave Payments on Termination

8.3.1 In addition to any other amounts payable under this Agreement, when a Field Employee's employment with the Company is terminated the Employee must be paid his or her:

- i. untaken accrued annual leave entitlements which shall be paid at the same rate as if the Employee had taken the leave during the course of employment.

8.3.2 Any payment made on termination of employment in relation to an Employee's accrued long service leave entitlement will be in accordance with Clause 26 which reflects the requirements of the Coal Mining Industry (Long Service Leave) Administration Act 1992.

9 REDUNDANCY

9.1 No Field Employee who is a party to this Agreement will be made redundant or retrenched during the life of this Agreement without prior consultation with the affected Field Employees.

9.2 The redundancy entitlements in this Clause do not apply to:

- 9.2.1 Field Employees terminated as a consequence of serious misconduct, performance or other inability to fulfil the contract of employment; or
- 9.2.2 Field Employees who resign; or
- 9.2.3 Field Employees engaged for a Fixed Term or a specific period of time or for a specified task/s; or
- 9.2.4 Apprentices and/or trainees; or
- 9.2.5 Casual Field Employees.

9.3 Definition of Redundancy

- 9.3.1 A Field Employee is made redundant where his or her employment is terminated at the Company's initiative:
- i. because the Company no longer requires the job done by the Field Employee (this may include but is not limited to loss of client site/s); or
 - ii. because of insolvency or bankruptcy of the Company.

9.4 Severance pay:

- 9.4.1 Subject to clause 9.3 Field Employee who is made redundant is entitled to severance pay equal to one (1) week's pay for each completed year of employment with the Company.
- 9.4.2 For the purpose of this clause one (1) week's pay is equal to the Field Employee's minimum hourly rate of pay multiplied by their ordinary hours of work. For full time Field Employee's the ordinary hours of work are thirty-five (35) hours.

9.5 Definition of Retrenchment

- 9.5.1 Retrenchment occurs when an Employee is made redundant due to:
- i. technological change;
 - ii. market forces; or
 - iii. diminution of reserves.

9.6 Retrenchment Payment

- 9.6.1 A Field Employee whose employment is terminated due to retrenchment is entitled to retrenchment pay equal to two (2) weeks' pay for each completed year of employment, with the Company, to a maximum of 30 weeks' pay, in addition to severance pay as prescribed by clause 9.4.
- 9.6.2 Regardless of the Field Employee's length of employment, the minimum payment due to an Employee under clause 9.5 is two (2) weeks' pay.
- 9.6.3 For the purpose of this clause one (1) week's pay is equal to the Employee's minimum hourly rate of pay multiplied by their ordinary hours of work. For full time Employee's the ordinary hours of work are thirty-five (35) hours.

9.7 Exemption

- 9.7.1 The Company is not liable for the payments prescribed by clauses 9.4 and 9.6 where,

(a) the Company obtains, or causes to be made available for the Field Employee, work:

- i. that the Field Employee is competent to perform;
- ii. in a position that carries the same (or higher) classification rate of pay as the Field Employee's previous position;
- iii. that can reasonably be regarded as permanent; and
- iv. allows the Field Employee to reside in the same general locality as the Employee's previous residence.

or,

(b) The termination is due to the ordinary and customary turnover of labour.

9.8 Variation of retrenchment pay

- 9.8.1 Despite anything in this Clause, the Company may make application to the Fair Work Commission to be granted relief from the obligation to make a retrenchment payment pursuant to Clause 9.6. A dispute over what is just and expedient may be resolved through the dispute resolution procedure.

10 Lawful directions

- 10.1 Field Employees are required to follow all lawful and reasonable directions that are within their ability, given by their Leading Hand/Supervisor, or any other appropriate person, as nominated by the Company or Client. Should a Field Employee not be able to perform the assigned task for any reason whatsoever, it is the Field Employee's duty to inform their Leading Hand/Supervisor or other appropriate person immediately.
- 10.2 Refusal to comply with any lawful and reasonable direction may result in disciplinary action, which may include the termination of employment.

11 Stand down

- 11.1 The Company has the right to withhold payment for any day or part of a day that Field Employees cannot be usefully employed because of any:
- 11.1.1 industrial action (other than industrial action organised or engaged in by the Company); or
 - 11.1.2 a breakdown of equipment, if the Company cannot reasonably be held responsible for the breakdown; or
 - 11.1.3 force majeure, for which the Company cannot reasonably be held responsible; or
 - 11.1.4 any stoppage of work by any cause for which the Client or Company cannot reasonably be held responsible.

- 11.2 A Field Employee who is stood down, may elect to use accrued annual leave entitlements or RDOs for such time.

12 Abandonment of Employment

- 12.1 A Field Employee who is absent from work for a period of three (3) consecutive working days without notification to the Company, unless the Field Employee can establish that it was not reasonably practical to do so because of illness or other reasonable excuse, will be considered to have terminated their employment without notice from the commencement of the period of absence, providing that Company has made reasonable attempts to contact the Field Employee.
- 12.2 Termination of employment by abandonment in accordance with 12.1 operates as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to the Company, whichever is the latter.
- 12.3 The Company will only be liable to pay wages and other payments up to and including the last day of actual work.

13 Safety and Fitness for Work

- 13.1 The Company is committed to undertaking its best endeavours to the establishment of safe workplaces, which includes the use of healthy and safe work methods, impairment testing (both planned and random), work organisation, working time, machinery and equipment.
- 13.2 Field Employees will not be allowed to enter or engage in work on a site or workplace if Field Employees are, or are reasonably suspected to be, under the influence of, or affected by, alcohol or drugs.
- 13.3 The Company often operates in industries, which carry significant safety risks. A Field Employee's health and wellbeing is an essential element of the Company's success. Any breaches of obligations in relation to Workplace Health and Safety may be considered serious and may result in consideration being given to disciplinary action which may include termination of employment.
- 13.4 Field Employees may be required to wear relevant personal protective equipment (PPE) at times as directed and/or as required. An Employee's clothing will be of a standard and nature as deemed relevant and appropriate by the Company. Any PPE provided will be replaced on a fair wear and tear basis, subject to the Company being satisfied that replacement is required. It is a condition of issue and of employment that the issued PPE will be worn whilst at the workplace.
- 13.5 Employees will be required to comply with Company and/or Client policies and

procedures. These policies and procedures are not a term of this Agreement, nor do they vest enforceable rights in the Employee, and are for the benefit of the Company only and do not give rise to any action against the Company in law, statute or equity.

- 13.6 The Company may, in accordance with the requirements of s42 of the Coal Mining Safety and Health Regulations 2017, require Field Employees to undertake an independent evaluation to determine an Employee's safety and fitness for work at any time both prior to and during an assignment.
- 13.7 Field Employees are required to notify the company of any additional paid or unpaid work undertaken during a Field Employee's engagement with the Company. The Company reserves the right to refuse work to employees who undertake additional work, which would impact on fatigue management.

14 Disputes at Work

14.1 If a dispute relates to:

- 14.1.1 a matter arising under the agreement; or
- 14.1.2 the National Employment Standards;
- 14.1.3 or during the course of employment generally

this term sets out procedures to settle the dispute.

- 14.2 A Field Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 14.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Field Employee or Field Employees and relevant supervisors and/or management.
- 14.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.
- 14.5 The Fair Work Commission may deal with the dispute in 2 stages:
 - 14.5.1 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
 - 14.5.2 if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - i. arbitrate the dispute; and
 - ii. make a determination that is binding on the parties.

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

14.6 While the parties are trying to resolve the dispute using the procedures in this term:

- 14.6.1 a Field 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
- 14.6.2 a Field Employee must comply with a direction given by the Company to perform other available work at the same workplace, or at another workplace, unless:
 - i. the work is not safe; or
 - ii. applicable occupational health and safety legislation would not permit the work to be performed; or
 - iii. the work is not appropriate for the Field Employee to perform; or
 - iv. there are other reasonable grounds for the Field Employee to refuse to comply with the direction.

14.7 The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.

15 Classifications

15.1 Classification Definitions

15.1.1 A Field Employee's classification for each assignment will be based on skills required for the particular role and not skills or qualifications a Field Employee may possess.

Classification	Description
Mineworker (Inexperienced)-	A Mineworker inexperienced performs the required tasks under direct supervision. This classification applies indicative roles include clean skins, trade assistants and labourers.
Mineworker (Experienced)	A Mineworker is an employee who is assessed by the employer as competent to perform the required tasks in a variety of operating circumstances and under limited supervision.
Mineworker (Advanced)	Mineworker Advanced is an employee who has successfully completed a relevant trade apprenticeship or its AQF equivalent. A Mineworker Advanced is also an employee who is assessed by the employer against the employer's available criteria as competent to perform the required tasks in all relevant operating circumstances at a level above that of a

	Mineworker. This includes Multi-skilled Operator (utilising 2 or more skills in operating production equipment).
Mineworker (Specialised)	A Mineworker - Specialised is an employee assessed by the employer as competent to perform specialised functions beyond the level of a Mineworker - Advanced. An employee appointed to this classification will undertake a specialised role, which requires them to exercise independent discretion in undertaking functions within the bounds set by the employer. The indicative roles include: Digger, Dragline and OCE.

16 Hours of Work and Related Matters

16.1 Ordinary hours of Work

16.1.1 The ordinary hours of work will be an average of 35 hours per week which is averaged over the roster cycle.

16.2 Weekend Work

16.2.1 All ordinary hours worked on a Saturday or Sunday will be paid as follows:

- i. Saturday: First 4 hours at time and a half, then double time thereafter; and
- ii. Sunday: Double time.

16.3 Shift Work

16.3.1 All ordinary hours worked by shift work Field Employees will be paid for at the following rates:

Type of Shift	Shift Rate
Day Shift	Ordinary Time
Afternoon Shift	115% of the ordinary time (day shift)
Night Shift	125% of the ordinary time (day shift)

16.4 Rostering of hours and length of shifts

16.4.1 Subject to the consultation obligations set out in Clause 30 of this Agreement, the Company will determine:

- i. the type of rosters to be worked by the Field Employees based on the Company's business requirements and those of its clients; and
- ii. the normal shift length to be worked will be up to 12.5 hours duration, being 12 hours of work and up to 30 minutes to perform an effective shift hand over.

16.5 Shift Starting and Finishing Times

16.5.1 The start and finish times of shifts will be determined by the Company based on the Company's business requirements and those of its Clients. Dayshift will not commence earlier than 5am and nightshift will not conclude any later than 7am.

16.6 Number and Spread of Shifts

16.6.1 Following consultation in accordance with this Agreement the number and spread of ordinary shifts may be varied by the Company based on the Company's business requirements and those of its Clients and will not exceed more than 4 consecutive 12.5 hour shifts per week.

16.7 Starting and Finishing Places

16.7.1 The starting and finishing place of a shift are to be agreed between the Company and the majority of affected Field Employees.

16.8 Roster Changes

16.8.1 A Field Employee's place on a roster will not be changed, unless a minimum period of one weeks' notice is provided.

16.9 Meal Breaks During Rostered Hours

16.9.1 A Field Employee is entitled to a meal break of 30 minutes, without deduction from pay, during rostered hours in each shift where he or she is rostered to work for more than 5 hours in the shift. A Field Employee working shift lengths of 10 hours or more is entitled to two (2) paid meals breaks each of 30 minutes duration.

16.9.2 The time at which meal breaks are to be taken is not fixed and Field Employees will be required to vary their meal break times to meet the needs of the Company's/Clients continuous operations; however a Field Employee will not be required to work more than five (5) hours without a meal break.

16.9.3 It is recognised that meal break times are flexible, and that Field Employees will vary their meal break times to suit continuous operations or as required. The second meal break will not be within 4 hours of the first break unless agreed.

16.10 Meal Breaks During Non-Rostered Overtime

16.10.1 If a Field Employee is required to work more than one and a half hours past the rostered shift finishing time (exclusive of any meal break) then, unless otherwise agreed:

- i. the Field Employee will be allowed at least 30 minutes for a meal without deduction of pay, before starting the overtime;

- ii. unless notified the previous day of the requirement to work overtime, the Field Employee will also be supplied with a meal or paid a meal allowance; and
- iii. after each four hours of overtime worked after a meal break the Field Employee will be entitled to take a further 30 minute break and either be supplied with a meal or be paid a meal allowance.

17 Contract of Employment

17.1 Assignments

- 17.1.1 At the commencement of each assignment, Field Employees will receive a Letter of Engagement that will confirm the details of a Field Employee's assignment including remuneration, together with any Flat Rate Arrangement that may apply in accordance with Clause 19.3, classification and a guide to the duration of the particular assignment. This will be based on the needs of the Client. It should be noted that the nature of Field work is such that the assignment may be varied or terminated at any time and the Company will advise Field Employees of these changes as soon as possible.
- 17.1.2 The Company may indicate the potential length of an assignment in good faith, the Client may vary the length of the assignment or terminate a Field Employee's attendance at its absolute discretion. When this occurs, the Company will undertake its best endeavours to offer Field Employees alternate assignments, where they are appropriate.
- 17.1.3 Where the Company is unable to offer Field Employees an alternative assignment, despite its best endeavours, the Company reserves its right to discontinue a Field Employee's employment.
- 17.1.4 Where a placement has reached an end, the Company confirms that a Field Employee's registration remains active. Field Employees are encouraged to contact a Company representative at the earliest convenience to update the Field Employee's experience, skills and availability. Field Employees will be required to return all Company or Client property, including keys, swipe cards and confidential information and/or material to the Company, and submit a final and authorised timesheet for any hours yet to be paid.
- 17.1.5 Where the position offered is a Casual position:
 - i. Field Employees will be notified within minimum two (2) hour of the start of an Employee's shift, if there is a cancellation or change to a Field Employee's shift start time. Where the Field Employee is not notified of the cancellation of the shift prior to the nominal start time or upon arrival at the site they will be entitled to a minimum of 4 hours pay.

- ii. Should Field Employees not be able to make their shift, the Field Employee must make every reasonable effort to notify the Company Representative prior to the scheduled start of shift, so other arrangements can be made.

18 Skills, Competency and Training

- 18.1 Field Employees are required to perform work within their skill set, competency, authorisation and training as required by the Company and/or Client. It is agreed that Field Employees shall undertake all training as directed for the performance of work and the development of skills.
- 18.2 Field Employees will be paid based on the skills needed to perform the duties of the role set out in their letter of engagement.

19 Wages

- 19.1 Employees will be paid one of the following wage rates, as relevant to their position, per ordinary hour worked:

19.2 Employee Ordinary Hourly Rate

Classification	Base Rate	Casual Rate
Mineworker (Inexperienced)-	\$26.60	\$33.25
Mineworker (Experienced)	\$28.00	\$35.00
Mineworker (Trades)	\$29.90	\$37.38
Mineworker (Advanced)	\$33.00	\$41.25

19.3 Implementation of flat rates

- 19.3.1 The Company may calculate a combination of classification rate for ordinary hours, shift penalties, overtime (including treble time for public holidays) rates and
- 19.3.2 any applicable allowances from this Agreement as a "flat rate" to apply at a particular site provided:
 - i. the flat rate of pay will not result in an employee being paid less than they would otherwise be entitled to under the Agreement for the work performed.

- ii. the Company engages in consultation with the Employee, and
 - iii. the Company provides at least 2 weeks' notice of any change.
- 19.3.3 Flat rates of pay will be calculated based on specific roster patterns on individual client sites.
- 19.3.4 The Company may pay employee flat rates of pay in satisfaction of the following entitlements in this Agreement that they would receive for working a particular roster cycle:
- i. Base rates of pay in clause 19.2;
 - ii. The casual loading in clause 7.4
 - iii. Allowances in accordance with the Modern Award;
 - iv. Public holiday penalties in clause 27;
 - v. Overtime and penalty rates for rostered overtime in clause 22; and
 - vi. Weekend and shift penalty rates in clause 16.
- 19.3.5 Where a flat rate of pay is paid, the Company will advise the employee, in writing, and keep a record of:
- i. The flat rate of pay that is payable;
 - ii. Which provisions of the Agreement will be satisfied by the flat rate of pay; and
 - iii. The method by which the flat rate of pay is calculated.
- 19.3.6 Any entitlement not specified in the record in clause 19.3.4 will be separately paid for in accordance with the applicable provisions of this Agreement (e.g. non-rostered overtime).

19.4 Wages for Casuals

- 19.4.1 Casual Employees will be paid the rate for the relevant classification in Clause 15 of this agreement plus a casual loading of 25% for working ordinary hours (except in the case of the flat hourly pay rates. – Clause 19.3 where casual loading has already been factored). Other loadings, shift, overtime, weekend, public holiday and penalty rates shall be in addition to the relevant classification hourly rate of pay as prescribed in Clause 19.2 of this agreement.
- 19.4.2 For the avoidance of doubt, should a casual field employee, who is paid a flat rate of pay, work hours that are different in any way to the roster provided to them for the flat rate of pay in a particular roster cycle, the Company will undertake a process of reconciliation to ensure that the employee is better off overall than the employee would be if paid in accordance with this Agreement. This reconciliation will be a comparison between the total rostered earnings actually paid to the field employee, and the total rostered earnings that the employee would have received for working the hours they worked if they were paid according to this Agreement. In calculating the total rostered earnings the employee would have received for working the hours they worked if they were paid according to this Agreement, penalty rates, overtime rates, shift loadings, and the casual loading would be applied on the same basis as for casual 'Staff' employees under this Agreement. Where the Company identifies that the employee was not better off overall, the employee must be paid an adjustment in the next pay cycle after the reconciliation, sufficient to leave the employee better off overall for the pay period for which the adjustment is paid.
- 19.4.3 Casual Employees will be engaged by the hour.
- 19.4.4 A Field Employee's assignments as a Field Employee mean that from time to time Employees will be placed on assignment to provide services for the benefits of Clients of the Company, with each shift constituting a discrete period of employment. Nothing in the provision shall affect the continuity of employment for any purposes including unfair dismissal or any other rights which may arise through the Fair Work Act, the relevant Award, Long Service Leave or Superannuation Legislation.
- 19.4.5 The Company does not control the length of any assignment with each shift constituting a discrete period of employment. While the Company may indicate the potential length of an assignment in good faith, the Client may vary the length of the assignment or terminate a Field Employee's attendance at its absolute discretion. When this occurs, the Company will undertake its best endeavours to offer Field Employees alternate assignments, where they are appropriate.
- 19.4.6 Where the Company is unable to offer Field Employees an alternative assignment, despite its best endeavours, the Company reserves its right to discontinue a Field Employee's employment.

19.5 Increases

19.5.1 The ordinary hourly rates for each classification in this Agreement will be increased by 2.5% at the following times:

- First full pay period on or after 1 July 2021
- First full pay period on or after 1 July 2022
- First full pay period on or after 1 July 2023
- First full pay period on or after 1 July 2024

19.5.2 The Company will periodically review market conditions, Client and Field Employee performance and may, at its discretion, award an increase to the classification rates in this Agreement additional to any increase awarded under sub clause 19.5

19.5.3 During the life of this Agreement no ordinary hour wage rate will fall below the relevant minimum wage as set out in the Modern Award.

20 Retention Bonus

20.1 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 site.

21 Payment of Wages

21.1 Payment of wages shall be by direct deposit/electronic funds transfer on a weekly or fortnightly basis to a bank account nominated by the Field Employee. Where a public holiday or weekend falls on the normal pay day, the payment shall be made as soon as is practicable after the normal pay day.

21.2 Deduction of Monies

21.2.1 Wages will be paid subject to the Field Employees authorised deductions as agreed with the Company. The Field Employee authorises the Company to deduct from their Wages (including leave and termination payments):

- i. All taxes, payable by law;
- ii. All identified and justified overpayments;

21.2.2 Field Employees authorise the Company to deduct from any wages or entitlements payable or owing to the Field Employee, any overpayments made in error by the Company to the Field Employee upon the Company providing a written notification of an overpayment to the Employees last known home address, last known email address or current work address.

21.2.3 Overpayments will be deducted via reasonable amounts over a period up to 12 weeks unless otherwise agreed.

21.2.4 The Company commits to ensure the provision section 324 (1)(b) of the Act are followed regarding any prior attempt in the pursuit of deduction of any monies from its employees.

21.3 Underpayments

21.3.1 The Company commits that where there is an acknowledged underpayment that this will be rectified and paid to the affected Field Employee as soon as possible and in the event that this cannot be achieved the maximum period will be the next pay period.

22 Overtime and Penalty Rates

22.1 Payment for Overtime

22.1.1 All time worked in excess of or outside the ordinary hours of any shift on the following days will be paid for at the following rates:

Day of the week	Rate of pay
Monday to Friday	First three (3) hours at time and a half After three (3) hours double time
Saturday	First three (3) hours at time and a half After three (3) hours double time
Sunday	All hour's double time

22.1.2 All time worked in excess of or outside the ordinary hours of any shift will be paid for at the rate of double time for Employees:

- i. who are six-day roster Field Employees or seven-day roster Field Employees;
- ii. who work a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays; or
- iii. who work a roster which requires ordinary shifts on Saturday and Sunday where the majority of the rostered hours on the Saturday or Sunday shifts fall between midnight Friday and midnight Sunday.

22.2 In calculating overtime, except in relation to Call Back, each day is to be treated separately.

22.3 Minimum Payment for Overtime on Saturday and Sunday

22.3.1 An Employee called on to work overtime on a Saturday or Sunday (that is not continuous with work started on the previous day) will be paid for at least four

hours at the appropriate rate.

22.4 Reasonable Additional Hours

22.4.1 Subject to the NES, the Company may require a Field Employee to work reasonable additional hours in addition to their rostered hours and be paid the applicable overtime rates.

22.5 Rest Period after Working Overtime

22.5.1 If a Field Employee works so much overtime that the Field Employee has not had at least 10 consecutive hours off duty between the end of the Field Employee's ordinary hours of work on one day and the start of the Field Employee's ordinary hours of work on the next day:

- i. the Field Employee will be released from duty after that overtime is finished until the Field Employee has had 10 consecutive hours off duty; and
- ii. there will be no loss of pay for ordinary hours of work time which occur during this absence.

22.5.2 A Field Employee who, on the instructions of the Company, resumes or continues work without having had 10 consecutive hours off duty will:

- i. Be paid at double time during ordinary hours and after that until the Field Employee is released from duty;
- ii. then be entitled to be absent for 10 consecutive hours; and
- iii. not suffer any loss of pay for ordinary hours of work time which occur during this absence.

22.6 Call back

22.6.1 A Field Employee who is recalled to work overtime after leaving the workplace will be paid for at least four hours' work at the appropriate rate each time the Employee is recalled, even if the job to be performed is completed within a shorter period.

22.6.2 However, if:

- i. it is customary for a Field Employee to return to the workplace to perform a specific job outside the Employee's ordinary working hours; or
- ii. the overtime is continuous (subject to a reasonable meal break) with the end or start of ordinary working time;
the minimum payment provided for in Clause 22.6.1 does not apply.

22.6.3 Where an Employee is recalled to work in accordance with this Clause and the actual period of work performed is less than four hours, it will not be counted as overtime for the purposes of calculating a rest period entitlement in accordance with Clause 22.6.

23 Superannuation

- 23.1 The Company will comply with all relevant superannuation legislation.
- 23.2 The Company will make a contribution to the employees chosen superannuation fund. Superannuation is paid on all rostered hours (including rostered overtime) but is not paid on unrostered hours or unrostered overtime. Where an Employee does not elect a fund, contributions will be made to the Company's default superannuation fund, Mine Super.
- 23.3 Superannuation is not paid for any unrostered overtime hours.

24 Annual Leave

- 24.1 Application and Interaction with NES
 - i. This Clause does not apply to Casual Field Employees.
 - ii. Annual leave entitlements are provided for in the NES. This Clause supplements those entitlements.
- 24.2 Entitlement to Annual Leave
 - 24.2.1 A Full-time Field Employee is entitled to accrue a total of 175 ordinary hours (five weeks) annual leave for each year of employment (Inclusive of the Field Employee's NES entitlement).
 - 24.2.2 A Part-time Field Employee is entitled to accrue a total of 175 ordinary hours (five weeks) annual leave for each year of employment (inclusive of the Field Employee's NES entitlement), on a pro rata basis.
 - 24.2.3 A Fixed term Field Employee is entitled to accrue a total of 175 ordinary hours (five weeks) annual leave for each year of employment (inclusive of the Field Employee's NES entitlement), on a pro rata basis.
 - 24.2.4 A Field Employee who:
 - i. is a seven-day roster Field 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 35 ordinary hours (one week) of annual leave each year of employment.
 - 24.2.5 Annual leave accrues weekly on a pro rata basis (based on the ordinary hours worked by the Field Employee).
 - 24.2.6 Where a Field Employee changes roster during the course of a year, the Field Employee's entitlement to annual leave will be calculated on a pro rata basis.

24.3 When Annual Leave can be Taken

- 24.3.1 A Field Employee with an annual leave entitlement, who wishes to take a single day of annual leave, must give the Company one week's notice in writing.
- 24.3.2 A Field Employee with an annual leave entitlement, who wishes to take any other amount of the accrued leave entitlement, must, unless otherwise agreed between the Field Employee and the Company, give the Company at least 21 days' notice in writing of the amount of leave to be taken.
- 24.3.3 The Company will grant a Field Employee's request to take accrued annual leave unless, in its opinion, the operations of the business will be adversely affected.
- 24.3.4 Unless otherwise agreed between the Company and a Field Employee, annual leave will be given and taken in not more than three separate periods each year; (this is not impacted by the taking of single days).

25 Personal/Carer's Leave

25.1 Application and Interaction with NES

- 25.1.1 Accruals and payment/entitlements in this Clause do not apply to Casual Field Employees.
- 25.1.2 Personal/carer's leave entitlements are provided for in the NES. This Clause supplements those entitlements and deals with evidence required to be provided by a Field Employee when taking paid personal/carer's leave.

25.2 Entitlement to Paid Personal/Carer's Leave

- 25.2.1 A Full-time Field Employee is entitled to accrue:
 - i. 105 ordinary hours (10 days at 10.5 hours per day) of personal/carer's leave (inclusive of the Field Employee's NES entitlement) on commencing employment; and
 - ii. 105 ordinary hours of personal/carer's leave on each anniversary of commencement.
- 25.2.2 Any accrued paid personal leave entitlement which is not taken by a Field Employee accumulates without limitation.

25.3 Notification and Evidence Requirements

- 25.3.1 As soon as reasonably practicable during the ordinary hours of the first day of each period of absence on personal/carer's leave, the Field Employee must notify the Company of their inability to attend for duty and, as far as practicable, state the estimated duration of the Field Employee's absence. If it is not

reasonably practicable for the Field Employee to provide notice during the ordinary hours of the first day of such absence, the Field Employee must inform the Company as soon as it is reasonably practicable to do so.

25.3.2 If requested by the Company, the Field Employee must provide a medical certificate, or such other evidence as will prove to the company's reasonable satisfaction that the absence from work was for the reasons set out in the NES. This must be provided to the Company as soon as practicable. For the avoidance of doubt, the provision of medical certificates or other evidence (accepted by the Company) shall be provided by the Field Employee in the following circumstances:

- i. More than two (2) consecutive days; or
- ii. For Monday to Friday Field Employee - Single days that are before or after a weekend and/or a public holiday.
- iii. Other evidence as referenced above can mean;
 - Statutory declarations; or
 - Confirmation document from a town chemist; or
 - Site medic/ESQ.

25.3.3 A Field Employee is not entitled to be absent from work on personal/carer's leave, or to receive payment for such absence, unless the Employee complies with the requirements set out in this Clause.

25.4 Deduction of Paid Personal/Carer's Leave

25.4.1 For each period of paid personal/carer's leave taken in accordance with this Clause the ordinary hours of rostered shifts that would have been worked by a Field Employee during the period will be deducted from the Field Employee's accrued paid personal/carer's leave entitlement.

25.5 Payment for Paid Personal/Carer's Leave

25.5.1 If a Field Employee takes a period of paid personal/carer's leave in accordance with this Clause the Company must pay the Field Employee at the Field Employee's Hourly Rate of pay for the Field Employee's hours as if they were at work in the period.

26 Birthday Leave

- 26.1 In addition to Field Employees paid annual leave entitlement, Field Employee who have been engaged on a permanent basis for more than 6 months can also take their birthday as one (1) day paid leave.
- 26.2 Field Employee who qualify for Birthday off leave must complete a leave form, a minimum of 4 weeks prior to the intended day off.
- 26.3 The day off must be on your Birthday or if that is not possible 14 days either side of your birthday in consultation with the Company.
- 26.4 The company may require the Field Employee to take an alternative day, if the Birthday Leave is unable to be accommodated due to the operational needs of the business. If an alternative day is proposed it will be within 14 days either side of the Birthday.
- 26.5 If the leave is not taken within 14 days either side of the birthday it is not accrued, and is not payable upon termination
- 26.6 You can not take this day's leave at any other time.
- 26.7 This clause does not apply to:
 - 26.7.1 Casual Field Employees; or
 - 26.7.2 Field Employees who have not been engaged for 6 months.

27 Long Service Leave

- 27.1 Field Employees will accrue in accordance with Coal Mining Industry (Long Service Leave) Administration Act 1992 and where eligible be paid as if they were at work.

28 Public Holidays

- 28.1 List of Public Holidays

The following are public holidays recognised for the purposes of this Agreement:

- a) 1 January (New Year's Day);
- b) 26 January (Australia Day and/or Survival Day);
- c) Good Friday;
- d) Easter Sunday;
- e) Easter Saturday, where that day is gazetted as a public holiday for that locality;
- f) Easter Monday;

- g) Easter Tuesday;
- h) 25 April (Anzac Day);
- i) Labour Day;
- j) Queen's birthday holiday;
- k) Local Show day;
- l) 25 December (Christmas Day);
- m) 26 December (Boxing Day);
- n) 24th December between 8pm and midnight; and
- o) any other day, or part day, declared or prescribed or gazetted by or under State law to be observed generally within Queensland, which the Field Employee is based for work purposes as a public holiday.

28.2 If under (or in accordance with a procedure under) a State law, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday in accordance with this Clause, then the substituted day or part-day is the public holiday instead.

28.3 For the avoidance of doubt a Field Employee is only entitled to observe one Show Day per annum as a public holiday. The Company will advise Employees which day Show Day will be observed relevant to their assigned location.

28.4 Payment for Public Holidays

28.4.1 A Field Employee rostered to work on a recognised public holiday:

- i. A Field Employee who is rostered to work on a holiday is to be paid at the rate of double time for work performed during ordinary hours, in addition to the payment prescribed.
- ii. Work performed in excess of ordinary rostered hours on a public holiday is to be paid at the rate of treble time.

28.4.2 A Field Employee who is not rostered to work on a public holiday which would otherwise have been a working day for that Field Employee will be paid for that day at the Field Employee's ordinary hours and classification rate. This clause does not apply to Casual Field Employees.

28.4.3 If payment for public holidays falling on rostered days off is included in a flat hourly rate, then no additional payment will be made for public holidays not worked.

28.4.4 Notice of Public Holidays to be worked subject to the NES

- i. The working of all public holidays will be on a voluntary basis for Field Employees not ordinarily rostered on for work.
- ii. Except for Christmas Day and Boxing Day public holidays, Field Employees are requested to work public holidays as rostered (where reasonable and consistent with the Act) unless advised otherwise by the Company with at least four (4) weeks' notice to be given for such change. Define the Christmas shutdown period as from 6pm 24th December to 6am 27th December.

29 Compassionate Leave

29.1 Entitlement, Notification and Evidence Requirements

29.1.1 In accordance with the NES, Field Employees are entitled to two days of compassionate leave for each occasion when a member of the Field Employee's immediate family or a member of the Field Employee's household:

- i. contracts or develops a personal illness that poses a serious threat to his or her life;
- ii. sustains a personal injury that poses a serious threat to his or her life; or
- iii. dies.

29.1.2 A Field Employee must notify the Company as soon as reasonably practicable of the intention to take compassionate leave.

29.1.3 The Field Employee must provide the Company with a medical certificate or such other evidence as proves to the Company's reasonable satisfaction that the absence from work was for the reasons set out in the NES.

29.2 Payment for Compassionate Leave (other than for Casual Field Employees)

29.2.1 If a Field Employee, other than a Casual Field Employee takes a period of compassionate leave in accordance with this Clause and the NES, the Company will pay the Field Employee at the Field Employee's minimum hourly rate of pay for the Field Employee's ordinary hours of work in the period.

29.3 Unpaid Compassionate Leave (Casual Field Employees)

29.3.1 If a Casual Field Employee takes a period of compassionate leave in accordance with this Clause and the NES, the leave is unpaid.

30 DOMESTIC VIOLENCE LEAVE

30.1 All employees will be entitled to family and domestic violence leave in accordance with the National Employment Standards, the Award and Company policy, whichever is the greater.

31 Consultation

31.1 This clause applies if the Company:

31.1.1 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

31.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

31.2 For a major change referred to in subclause 31.1.1.

31.2.1 the Company must notify the relevant employees of the decision to introduce the major change; and

31.2.2 subclauses 31.3 to 31.9 apply.

31.3 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

31.4 If:

31.4.1 a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and

31.4.2 the Employee or Employees advise the Company of the identity of the representative; the Company must recognise the representative.

31.5 As soon as practicable after making its decision, the Company must:

31.5.1 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

31.5.2 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.

31.5.3 Given the nature of the Company's business, any consultation undertaken with Employees may be in an electronic format such as phone, video conferencing, and skype style discussions. Written notice may also be provided by email/fax. This is for the purposes of ensuring all employees engaged on remote or regional placements, are able to be consulted with in line with this clause without undue cost or delay.

- 31.5.4 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 31.5.5 The Company must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- 31.5.6 If a term in the Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Company, the requirements set out in subclauses 31.2.1, 31.3 and 31.5 are taken not to apply.
- 31.5.7 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. a major change to the composition, operation or size of the Company'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.

Change to regular roster or ordinary hours of work

31.6 For a change referred to in paragraph 31.1.2:

- 31.6.1 the Company must notify the relevant Employees of the proposed change; and
- 31.6.2 subclauses 31.6.2 to 31.6.7 apply.
- 31.6.3 The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- 31.6.4 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 Company of the identity of the representative; the Company must recognise the representative.
- 31.6.5 As soon as practicable after proposing to introduce the change, the Company 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:
 - 31.6.5.ii.a all relevant information about the change, including the nature of the change; and

- 31.6.5.ii.b information about what the Company reasonably believes will be the effects of the change on the Employees; and
 - 31.6.5.ii.c information about any other matters that the Company 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).
- 31.6.6 Given the nature of the Company's business, any consultation undertaken with Employees may be in an electronic format such as phone, video conferencing, and skype style discussions. Written notice may also be provided by email/fax. This is for the purposes of ensuring all employees engaged on remote or regional placements, are able to be consulted with in line with this clause without undue cost or delay.
- 31.6.7 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 31.6.8 The Company must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- 31.6.9 In this term, "relevant Employees" means the Employees who may be affected by the major change.

32 Flexibility

- 32.1 The Company 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:
- 32.1.1 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; and
 - v. leave loading.
 - 32.1.2 the arrangement meets the genuine needs of the Company and employee in relation to 1 or more of the matters mentioned in paragraph 32.1.1; and
 - 32.1.3 the arrangement is genuinely agreed to by the Company and employee.
- 32.2 The Company must ensure that the terms of the individual flexibility arrangement:
- 32.2.1 are about permitted matters under section 172 of the Fair Work Act 2009; and
 - 32.2.2 are not unlawful terms under section 194 of the Fair Work Act 2009; and

32.2.3 result in the employee being better off overall than the employee would be if no arrangement was made.

32.3 The Company must ensure that the individual flexibility arrangement:

32.3.1 is in writing; and

32.3.2 includes the name of the Company and employee; and

32.3.3 is signed by the Company and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

32.3.4 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
- iv. states the day on which the arrangement commences.

32.4 The Company must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

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

32.5.1 by giving no more than 28 days written notice to the other party to the arrangement; or

32.5.2 if the Company and employee agree in writing — at any time.

33 Company and site policies and protocols

33.1 The Field Employees recognise that Company and Client site policies, standards and protocols may be introduced from time to time. These policies, standards and protocols do not form part of this Agreement and shall not contradict the terms of this Agreement.

33.2 Where policies, standards and protocols are introduced the Company will advise Field Employees and where they can be viewed, the Field Employees agree to familiarise themselves and comply with the policies, standards and protocols.

34 Personal Protective Equipment

34.1 Work clothing shall be supplied by the Company prior to a new Field Employees engagement on site and will be consistent (as a minimum) with the following items of safety clothing which must be worn at all times when appropriate:

- 4x long sleeve shirt; and
- 4x trouser; and

For the avoidance of doubt the above is a minimum issue of clothing.

- 1 Mine Site Winter Jacket or equivalent *; and

**in reference to the provision of a Company supplied jacket or equivalent this shall be issued prior to the first winter worked, and will be replaced after 2 years of work or replaced on fair wear and tear basis.*

- 1 pair of safety boots (which is at the Australia Standards).

- 34.2 For the avoidance of doubt Field Employees who are performing roles that require specialised boots (e.g. welders) will be provided appropriate boots in accordance with the relevant Australian Standards.
- 34.3 Field Employees who chose not to receive Company issued boots in preference of providing their own to the equivalent Australian Standards will be reimbursed on provision of the receipt of the purchase of their own boots up to a maximum of \$100.
- 34.4 All clothing and footwear mentioned above will be replaced on a fair wear and tear basis on the condition that old clothing or foot wear is presented for inspection if required. For the avoidance of doubt, jackets will be replaced for Field Employee after two (2) years of (continuous) work.
- 34.5 Any work clothing that is deliberately damaged or lost by the Field Employee will be replaced at the Field Employee's cost.
- 34.6 Work clothing mentioned in this clause will be subject to the Field Employee having worked continuously for the Company for a period of at least 12 weeks. Therefore, should the Field Employee leave within the first 12 weeks of employment via resignation or summary dismissal, then they must return all Company provided clothing to the Company for the PPE that they have been provided or cost recovered.

35 Training and Work-Related Licenses

- 35.1 All Field Employees commit to attending all Company/Client directed training.
- 35.2 Field Employees whilst in employment who are directed by the Company to attend training courses that are required for their task related assignment shall be paid for ordinary hours (only) whilst attending training courses.
- 35.3 When a Field Employee attends Company directed training outside of their normal rostered hours, they will be paid a minimum of four (4) at the applicable Overtime Rate or the Field Employees flat rate.

- 35.4 Field Employees who are required to maintain their trade related licences for the benefit of the Company whilst on assignment shall be reimbursed for the cost for the renewal of those licences on demonstration of receipts and documentation.
- 35.5 For the avoidance of doubt Field Employees who are invited to attend training courses that are not relevant to their assignment tasks will not be paid to attend these courses.
- 35.6 The Company will pay the cost of Coal Board Medicals in accordance with its statutory obligations.

36 Licence

- 36.1 If it is a requirement of an Employee's employment that he/she holds a current license or permit to drive or operate a particular vehicle or piece of machinery, the Employee must notify the Company immediately if he/she is charged with any offence in relation to the operation of the vehicle or piece of machinery or if the Employee's licence is suspended or cancelled.

37 Union Activities

- 37.1 Elected representatives will be allowed unpaid absences to attend Union Activities off site upon request provided the following conditions are met:
 - i. There is a maximum of five days per year for each representative of leave available; and
 - ii. At least 4 weeks' notice is given to the supervisor in writing.
- 37.2 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:
 - a) Attend enterprise agreement negotiations
 - b) To hold communication meetings of employees on the site that the elected representative works at where such meetings are given prior approval by the Company and the work site.
- 37.3 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.
- 37.4 There may be no more than two (2) field employee representative elected to represent field employees covered by this Agreement for the purpose of this clause unless agreed after consultation of both parties.

38 Accident Pay

38.1 A Field Employee in receipt of weekly payments under the provisions of the Workers' Compensation and Rehabilitation Act 2003 (Queensland) or such other applicable legislation will be entitled to receive accident pay from the Company subject to the following conditions and limitations:

38.2 Payment to be made during Incapacity

The Company shall pay, or cause to be paid accident pay during the incapacity of the Employee, within the meaning of the said Act

- until such incapacity ceases; or
- until the expiration of a period of seventy-eight weeks from the date of injury,

whichever event shall first occur, even if the Company terminates the Field Employee's employment within the period.

38.3 Meaning of 'Accident Pay'

38.3.1 For the purposes of this clause accident pay from the date of signing of this Agreement means:

a) For the initial period of thirty-nine weeks from the date of injury a weekly payment representing the difference between the weekly amount of compensation paid to the Employee by virtue of the relevant legislation above and the weekly amount that would have been received by virtue of this Agreement had the Employee been on paid sick leave at the date of the injury.

b) For a further period of thirty-nine weeks a weekly payment representing the difference between the weekly amount of compensation paid to the Employee by virtue of the relevant legislation above and the weekly amount that would have been received by virtue of this Agreement had the Employee been on paid sick leave at the date of the injury.

38.4 Pro-rata Payments

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

38.5 When not entitled to Payment

38.5.1 An Employee shall 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.

38.6 Redemptions

38.6.1 In the event that an Employee receives a lump sum in redemption of weekly payments under the relevant legislation above, the liability of the Company to pay accident pay as herein provided shall cease from the date of such redemption.

38.7 Damages Independent of the Legislation

38.7.1 Where the Employee recovers damages from the Company or from a third party in respect of an injury independently of the above legislation, the Employee shall be liable to repay to the Company the amount of accident pay which the Company has paid under this clause and the Employee shall not be entitled to any further accident pay thereafter.

38.8 Calculation of Period

38.8.1 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.

39 Infectious Diseases / Dangerous Medical Conditions:

39.1 Upon report by a registered medical practitioner that by reason of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by the respective State/Federal Government or law in respect to such disease, a field employee is unable to attend for work, the Company will approve the field employee special leave of absence with full pay (excluding casual field employees). The period of leave must not be for any period beyond the earliest date at which it would be practicable for the field employee to return to work having regard to the restrictions imposed by the respective State/Federal Government or law and will not exceed a maximum of fourteen (14) days per annum. For the avoidance of doubt this leave is not accumulative and does not accrue year to year and does not apply to casual employees. Should a Field Employees absence extend beyond the entitlements provided in this clause they will be required to access their leave accruals for the period of time they are unable to access the client's site.

39.2 Where the Company reasonably believes that the field employee is in such a state of health as to render the field employee a potential health risk to other field employee, the Company will require the field employee to absent themselves from the workplace until the field employee obtains and provides to the Company a certificate from a registered medical practitioner confirming the field employee/s state of health. Upon receipt of the

certificate the Company may direct the field employee to be absent from duty for a specific period or, if already on leave, direct such field employee to continue on leave for a specified period. Any such absence will be regarded as sick leave. For the avoidance of doubt, this clause is not applicable to casual field employees.

- 39.3 Where the field employee is excluded from a clients' site/s as a result of the implementation of a policy/directive in relation to vulnerable workers (as defined by the Queensland Government) the Company will, in the first instance, seek to temporarily relocate the affected field employee/s to an alternative site. Where this is not possible the field employee will be directed to undertake all and any training/refresher commensurate with their role by the Company. Should there be no training/refresher training available the field employee/s will be notified to remain at their place of residence and be fit for duty if required. During such time the field employee/s will continue to receive payment as if they were attending their usual rostered shifts. Should the field employee/s not wish to hold themselves in a fit and ready state they will be required to access their leave accruals for the period of time they are unable to access the client's site. For the avoidance of doubt, this clause is not applicable to casual field employees.

40 Signatories

The parties recognise that each has a responsibility to ensure the successful operation of this Agreement.

The signatures below testify the fact that the Agreement has been approved by the Field Employees who will be covered by the Agreement in accordance with the Fair Work Act 2009.

Signed for and on behalf of Protech Mining and Maintenance Pty Ltd by:

Name: Marc MEILI

Signature 

Address 3466 Pacific Highway, Springwood 4127

Position: Managing Director

Date 18.06.21

Witness Name Natalie Stewart

Signature 

Address 3466 Pacific Highway, Springwood 4127

Date 18.06.21

Signed for and on behalf of the employees of Construction, Forestry, Maritime, Mining and Energy Union -Queensland:

Printed Name _____

Signature _____

Address _____

Position: Employee signing on behalf of the Employees covered by this agreement

Date _____

Witness Name _____

Signature _____

Address _____

Date _____

40 Signatories

The parties recognise that each has a responsibility to ensure the successful operation of this Agreement.

The signatures below testify the fact that the Agreement has been approved by the Field Employees who will be covered by the Agreement in accordance with the Fair Work Act 2009.

Signed for and on behalf of Protech Mining and Maintenance Pty Ltd by:

Name: Marc MEILI

Signature _____

Address _____

Position: Managing Director

Date _____

Witness Name _____

Signature _____

Address _____

Date _____

Signed for and on behalf of the employees of Construction, Forestry, Maritime, Mining and Energy Union -Queensland:

Printed Name STEPHEN SMYTH

Signature 

Address LEVEL 2, 61 BOWEN ST SPRING HILL

Position: Employee signing on behalf of the Employees covered by this agreement

Date 21/06/21

Witness Name Mikaela Spillman

Signature 

Address 33 Milton St, Mackay QLD 4740

Date 21/06/21

APPENDIX 1 – Apprentices and Trainees

1. Definitions

“Act” means the relevant State or Territory vocational education and training legislation or any successor legislation:

- Queensland: Vocational Education and Training (Commonwealth Powers) Act 2012;

“Adult Apprentice” means an Apprentice who is twenty-one years or over at the time of commencing the Apprenticeship or Traineeship.

“RTO” means Registered Training Organisation.

“School Based Apprenticeship or Traineeship” means a contract of training and paid employment where a school student’s timetable or curriculum reflects a combination of work, training and school study, which together lead to the award of a senior certificate or its equivalent, and progress towards, or the attainment of a vocational qualification.

“Field Employee Apprentice/Trainee” means an Field Employee undertaking an Apprenticeship or Traineeship under a National Training Contract, while placed on an assignment for a Client of the Company.

“Traineeship” means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AFQ certificate level qualification.

“Training Contract/Plan” means an Agreement for an Apprenticeship/Traineeship made between the Company and an Apprentice/Trainee, which is registered with the relevant State or Territory authority.

2. Probation Period/ Qualifying Period

2.1 All Apprentice/Trainee’s shall be engaged on a six (6) month probation period/ qualifying period. Employment with the Company and continuation of the Training Contract is subject to the satisfactory completion of the full period. The probation period/ qualifying period only applies to new employees.

2.2 During the probation period/ qualifying period, the Apprentice/Trainee’s work will be assessed on a regular basis by the Company and/or Client Supervisor. During the probation period/ qualifying period and where there is sufficient evidence or reason the Company may terminate the employment of the Apprentice/Trainee by providing one (1) weeks’ notice.

2.3 The Apprentice/Trainee during the probation period/ qualifying period may terminate their employment by providing one (1) weeks' notice or forfeit monies due to the amount equal to the amount that the employee would have received.

3. Type of Employment for Apprentices/Trainees

3.1 Apprentices will be engaged on a Full time basis and will be notified in the Letter of Engagement of the type. All leave entitlements will be accrued pro-rata based on the number of hours worked or engaged in training during each discrete pay period.

3.2 Trainee's will be engaged on either a Full time or Part Time basis and will be notified in the Letter of Engagement of the type. A full-time traineeship based on 35 ordinary hours per week. A part-time traineeship based on less than 35 ordinary hours per week. All leave entitlements will be accrued pro-rata based on the number of hours worked or engaged in training during each discrete pay period.

3.3 Field Employees engaged on a School based apprenticeship or traineeship will be paid a loading of 25% in lieu of:

- i. Annual Leave and Leave Loading entitlements;
- ii. Personal Leave entitlements;
- iii. Notice of Termination requirements;
- iv. payment for attendance at college; and
- v. Other entitlements not applicable to Casual Field Employee.

3.4 Where an Apprentice/Trainee converts from a previous training contract, whether fully or partially completed, they will receive credit for time previously serviced when calculating the anniversary date for each year of the apprenticeship/traineeship. Provided where it is demonstrated that the Apprentice/Trainee is not up to the appropriate standard to warrant credit from previous service, the parties may by agreement accept a lesser rate and/or extend the anniversary date of entering into a subsequent year of the apprenticeship/traineeship.

3.5 The anniversary date for Part-Time and School Based Apprentices/Trainees will be pro-rata calculated for year nominal year prescribed in accordance with the training contract.

4. Paying for undertaking approved course of instruction or qualification

4.1 Time spent by the Apprentice/Trainee in undertaking an approved course of instruction or qualification, up to the maximum number of hours approved in

accordance with the Act, is taken to be:

- 4.1.1 Time worked for the Company; and
 - 4.1.2 Considered as ordinary working hours when calculating wages and conditions.
- 4.2 Clause 4.1 of Annexure A applies irrespective of the way the course of instruction or qualifications is delivered, such as block release, day release, workplace delivered training or correspondence.
- 4.3 For the avoidance of doubt, wages for undertaking approved courses are not payable to school based apprentices/trainees.

5. Stand down

- 5.1 Apprentices or Trainees after completion of a training placement with a Client may be placed immediately into another placement to continue their training. Where college/RTO or other forms of leave are not available or exhausted then the Company agrees to pay up to five (5) days of "No Client Leave" per year.
- 5.2 Once the "No Client Leave" has been exhausted, and consistent with the Fair Work Act the Company may send an Apprentice/Trainee home without pay where they cannot perform useful work due to circumstances outside of the Company's control up to a maximum of twenty (20) consecutive work days in one calendar year.
- 5.3 Before a decision is made to stand down an Apprentice/Trainee the Company will reasonably seek paid work alternatives, which may include but not limited to placement with another Client, required college/RTO training and/or required use of annual leave or RDO entitlements.

6. Wage Rates

- 6.1 The rate of pay for Apprentice and/or Trainees shall be at least 1% higher than the Modern Award.

IN THE FAIR WORK COMMISSION

Matter Number: AG2021/5789

Applicant: Protech Mining and Maintenance Pty Ltd and Protech Personnel (NQ) Pty Ltd

Section 185 – Application for approval of a single enterprise agreement.

Undertaking – Section 190

I Nicole Thompson, National IR Manager give the following undertaking in relation to Protech Queensland Coal Agreement 2021 (the Agreement).

1. I have the authority given to me by Protech Mining and Maintenance Pty Ltd and Protech Personnel (NQ) Pty Ltd to provide the following undertakings in relation to the application before the Fair Work Commission.
2. I have sought views of the bargaining representatives for this undertaking pursuant to section 190(4) of the *Fair Work Act (Cth)*.
3. Protech Mining and Maintenance Pty Ltd and Protech Personnel (NQ) Pty Ltd gives the following undertaking pursuant to section 190 of the *Fair Work Act 2009 (Cth)*
 - a. In relation to clause 19.3 and clause 19.4.2 we undertake that the employee's rates will not fall below the minimum rates contained in the Agreement. Where an employee's Employee considers that over a month period they are not better off overall under this Agreement due to the implementation of clause 19.3 and clause 19.4.2, they may request a comparison of the wages received for that roster cycle under this Agreement and the wages they would otherwise have been provided with under the Award. Any shortfall in wages which would otherwise be payable under the Award will be paid to the Employee in the next pay period after the review is completed. If the Employee and Employer cannot reach agreement on the total amount which should be paid by the operation of this undertaking, the Dispute Resolution Procedure in clause 14 of the Agreement will be followed and the parties will agree to the Fair Work Commission arbitrating and making a binding determination to resolve the matter.
 - b. As per clause 4 of the Agreement it is to be read in conjunction with the Black Coal Mining Industry Award 2010, as varied from time to time. For the avoidance of doubt, where the Agreement is silent, the terms of the Black Coal Mining Industry Award 2010 shall apply.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Nicole Thompson

7 July 2021

Date