

SAME JOB SAME PAY UPDATE

WORKPAC ● OS PRODUCTION & MAINTENANCE ● CHANDLER MACLEOD

2 September

Members,

This update is to assist members and answer your questions about the progress of Same Job Same Pay at Peak Downs, Saraji and Goonyella Riverside mines.

In a nutshell, the Fair Work Commission has backed Same Job Same pay starting mid-September – **but BHP is fighting hard to delay, limit and ultimately stop the pay rises flowing.**

How BHP is fighting Same Job Same Pay

As you would have seen from some of our updates and social media lately, there are on-going developments related to our application for Same Job Same Pay for BHP OS Production, BHP OS Maintenance, Workpac and Chandler Macleod at Peak Downs, Goonyella Riverside and Saraji.

Following on from the hearing in the Fair Work Commission on the 17th of August, the FWC handed down its decision on when the higher rates of pay should take effect. For BHP OS workers, the new rates will apply from the 14th of September, and for Workpac and Chandler workers, the new rates apply from the 15th of September.

However, as indicated in our last update to members, BHP are using a range of legal processes to cause delays:

- Appeal to the Federal Court
- Stay application
- Prop Dispute

BHP's Appeal

As outlined in previous updates, BHP have applied for a judicial review (appeal) of the FWC's decision in the Federal Court.

What is an appeal to the Federal Court?

Essentially, BHP is asking the Federal Court whether the Fair Work Commission correctly understood the law when making its decision.

The MEU will argue that the Commission got it right. If successful, the SJSP orders will stand.

BHP will argue that the Commission misunderstood the law. If successful, the Federal Court will outline how the law should be understood and ask the FWC to reconsider the matter considering this explanation.

Who does this affect?

This affects OS employees who work at Peak Downs, Saraji and Goonyella Riverside mines. At this stage, no appeal has been filed with respect to Workpac and Chandler Macleod employees.

How long will this take?

The MEU has sought that the Federal Court hear the matter as soon as they are able. We expect this to be in November.

What will the MEU do if BHP are successful in the Federal Court?

If BHP are successful in the Federal Court, the MEU will continue to fight for Same Job Same Pay. There are several ways we can do this:

1. Appeal the Federal Court's decision to the High Court. The High Court is Australia's top court.
2. Continue to fight the decision in the FWC, arguing even if the law is understood in the way BHP say it should be, the Commission should make new SJSP orders.
3. Seek that the government change the law.

BHP's Stay application

As a part of BHP's Federal Court appeal, they have applied for a stay order.

What is a stay order?

A stay order is a court order that effectively prevents something from occurring. In this case, it would stop BHP from having to make SJSP payments.

The MEU is arguing against the stay order being issued. If successful BHP will be required to make SJSP payments while they are arguing their appeal.

If BHP are successful pay rises for OS employees will not be paid until after the appeal is resolved and only if the MEU wins the appeal.

Who does this effect?

This affects OS employees who work at Peak Downs, Saraji and Goonyella Riverside mines.

How long will this take?

BHP's application for a stay of the FWC's orders is to be heard on the 5th of September.

BHP's PROP Dispute

As outlined in the last update, BHP have written to the Union to initiate a dispute about the PROP.

What is the PROP?

The PROP (or the Protected Rate Of Pay) is the full rate of pay payable under the host employer's agreement. In this case, the PROP is the rate of pay payable under the BMA Central Agreement 2022.

What's in dispute?

BHP are claiming that they do not know how to pay the OS employees in accordance with the Central Agreement.

How does this effect payments owed?

It doesn't, if the Federal Court doesn't issue the stay order, OS employees will start getting the PROP from the 14th of September.

What's the MEU doing?

The MEU is consulting with BHP to ensure that members are paid correctly. If members are not paid correctly the MEU will seek all payments members are owed.

What's next?

First, we understand your frustration at the constant delays. BHP labour hire workers have waited long enough for pay rises which they are well and truly entitled to.

At this stage – in the absence of any further action from BHP – Same Job Same Pay orders covering WorkPac and Chandler Macleod workers are due to take effect on 15 September. While this will be cause for celebration, it would be a slap in the face for OS employees if they miss out.

The MEU is continuing to invest in the best legal representation to take on BHP and end the labour hire rort for good.

A number of members have also contacted us to discuss how they will be classified under the BMA Agreement. As everyone has different skills and experience all of these matters will need to be dealt with on a case by case basis.

As a reminder to members, the new SJSP laws allow for disputes about these matters to bypass the disputes processes in your workplace Agreement, which should assist in speeding up any resolutions to these issues. The laws are also clear, your wage can't go backwards where orders are in place.

For now, we need to see if members will be placed in the correct classification. If not, members need to contact the Union but will need to gather the relevant information which will include things like, payslips, letters offer and information about your skills and experience.

The Union will ensure, and where required, enforce the laws for members to ensure you are receiving what you should be under the SJSP orders.

We will keep you updated as these matters progress.

WORKPLACE AGREEMENTS

It's important to note that Same Job Same Pay only deals with your rates of pay. All other matters related to your employment are covered by your workplace agreement.

BHP OS Production EA

The FWC has approved the Production EA and it is now in place. The FWC approved the Agreement with undertakings from the Company about how public holidays will work. Since that time, we understand that BHP OS have communicated in pre-starts how they have nominated Christmas and Boxing Day as non-working days, this was an important and big win in the Agreement.

Workpac EA

Negotiations for a replacement Workpac Agreement are still ongoing, however the FWC are no longer involved to assist. Following the last meeting, we are now waiting for the Company to provide further information about some of our claims. We have outlined that if the Company are not prepared to address some of our outstanding items, then they should put the Agreement to a vote of the workforce.

Separately, we have also sent out surveys and held online meetings for members. It's important to be involved and help us guide the direction of the negotiations. This is your Agreement and it's important you have your say.

Chandler EA

Negotiations for a replacement Chandler Agreement have only just commenced with 2 meetings held so far. The Union has provided Chandler with some of its claims, and we are waiting for the Company to reply with further meetings scheduled.



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