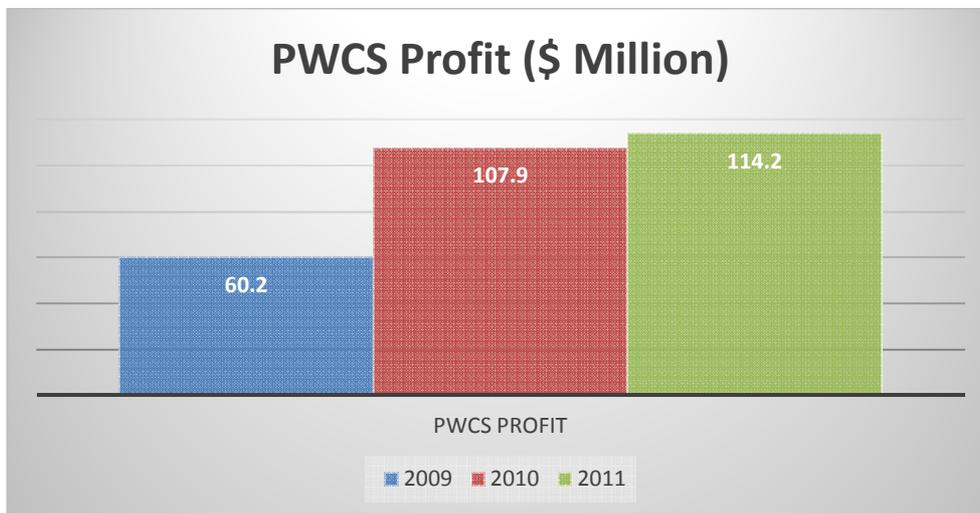




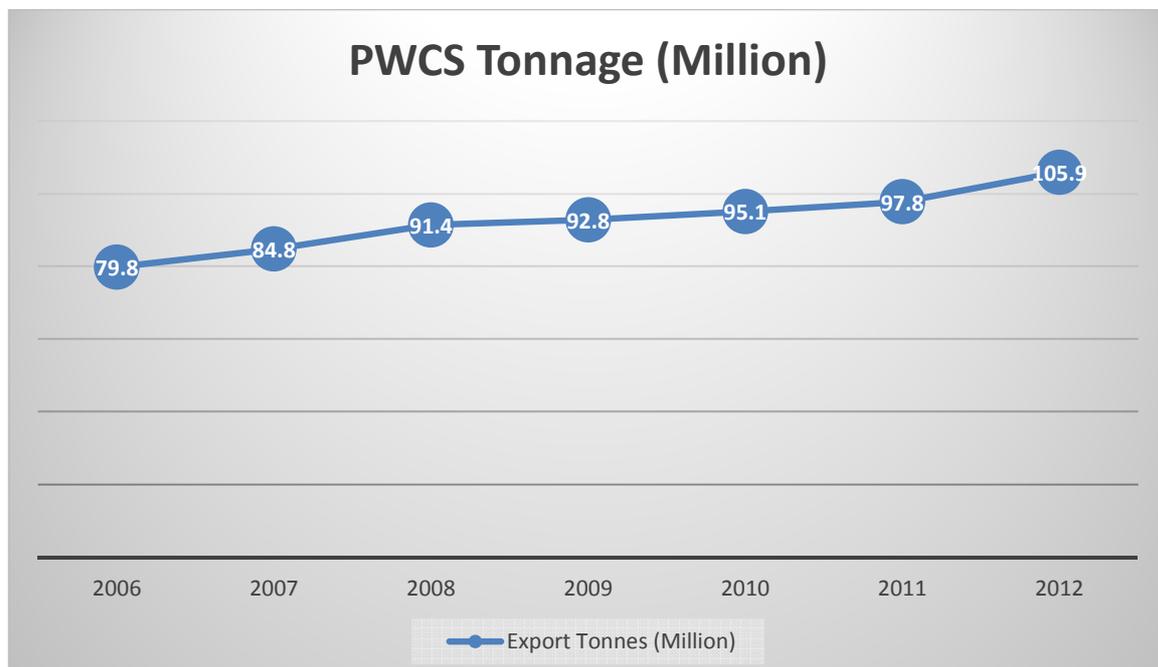
# Port Waratah Coal Services Enterprise Agreement Negotiations

## PWCS Operations

Port Waratah Coal Services, located in the port of Newcastle, the gateway to more than 30 mines throughout the Hunter Valley, operates one of the world's largest coal handling operations, between the Kooragang and Carrington terminals, exporting to customers around the world. PWCS continues to break financial records. In 2009 PWCS' net profit of the consolidated entity was \$60.2 million after income tax, which almost doubled in 2010 to \$107.9 million and increased to \$114.2 million in 2012.



PWCS' tonnages have increased every year since 2006.





## **PWCS Ownership**

PWCS is an unlisted public company owned by the Hunter Valley Coal Industry (70%) and Japanese Coal Customers (30%).

### **PWCS Effective Ownership:**

- Coal & Allied 30.0% (which is what Rio trades as in NSW)
- Japanese Importers 29.6%
- Bloomfield Group 3.5%
- Newcastle Coal Shippers 36.9%

### **Newcastle Coal Shippers Effective**

- Xstrata Coal 37.1% 13.7%
- Coal & Allied 22.7% 8.3%
- Anglo Coal 20.0% 7.4%
- PWCS 9.0% 3.3%
- Bloomfield Group 2.8% 1.0%
- BHP Billiton 1.7% 0.6%
- Other 6.7% 2.5%

### **Board of Directors Newcastle Coal Shippers**

- Bloomfield Group 4
- Coal & Allied 3 (Including independent Chairman)
- Japanese Trading, Power and Cement 3

There is a total of 10.

## **Negotiations**

Members of the Single Bargaining Unit 'SBU' representing the 5 unions commenced negotiating on the new enterprise agreement on 1 August 2012 and have since held in excess of 50 meetings. The current 2009 Enterprise Agreement has a nominal expiry date of 6 October 2012. The SBU believe the approach to negotiations by PWCS seems ideological with no real reason for change or cost saving. The SBU, on numerous occasions have questioned PWCS on the benefits of particular changes and the standard response is "business flexibility". Employees have continued to evolve with PWCS to ensure records continue to be broken, becoming one of the largest coal handling facilities hasn't happened without flexibility and change by employees. The SBU and employees have always worked together to achieve change and flexibility, however PWCS' current upper management is driving what is perceived as a philosophy of dictation. In recent times PWCS upper management has either been replaced with Rio Tinto personnel from other Rio Tinto mines & organisations or transferred employment from PWCS to Rio Tinto.

### **Key Log of Claims - SBU**

The core 6 SBU log of claim items are:

- Superannuation;
- Wage increase;



- Annual leave increase;
- Changes to local event public holiday;
- Accident/death/illness and income protection &
- Changes to redundancy payments.

### Key Log of Claims - PWCS

PWCS' union busting approach started on day one, when PWCS openly presented that it was their intention to remove all references to the unions from the new enterprise agreement. PWCS also set its major negotiation items:

- Dispute resolution – *“Modify the clause to reduce the potential disruption to the business.”*
- Contractors – *“Modify contractor notification process and content to reduce constraints on the business.”*
- Classifications & Skills – *“Simplify current classification level descriptions & Progression through levels not driven by skills acquisition.”*
- Variations to rosters – *“Ability to introduce new rosters during the term of the agreement” (with consultation only)*
- Remuneration – *“Annualised remuneration model”*
- Individual flexibility arrangements. – *“Broaden the flexibility term to deal with any term under the Enterprise Agreement.”*

### Dispute Resolution (DSP)

Part of the SBU proposal was to increase the matters covered by the dispute resolution procedure, to cover company policies. PWCS has in excess of 400 company policies, procedures and safety standards. PWCS initially proposed 3 major changes to the dispute resolution clause:

1. Under the current agreement employees have the ability to raise a dispute for any matter related specifically to the performance of work. Under PWCS' initial proposal, employees could only raise a dispute about a matter arising under the Agreement or in relation to the NES. Thus, taking away employees right to dispute matters such as; alcohol & other drugs policy, disciplinary action against an employee, unsafe work practices / methods etc.;
2. PWCS sought to remove the arbitration powers conferred on Fair Work Australia; &
3. PWCS proposed to remove the status quo from the Agreement and proposed employees, work as directed whilst a dispute was being resolved.

The SBU has maintained its position from the commencement of negotiations; employees need to have the ability to question decisions made by PWCS, have status quo apply to such matters until the issue is resolved and in the event the an issue cannot be settled at the workplace level either party has the ability to progress the matter to FWA for conciliation and if required arbitration.

PWCS' current DSP position is:

- Matters that can be placed in dispute:



- Matters under the Enterprise agreement (*Conciliation & Arbitration available through FWA*)
- Matters under the NES (*Conciliation & Arbitration available through FWA*)
- Disciplinary matters (*Conciliation & Arbitration available through FWA*)
- Other matters about the performance at work (*Internal dispute resolution only*)
- Status quo only applies to major work practice changes & where there is a threat to people's health and safety.

The SBU have concerns with the removal of the ability to seek an independent person (FWA) to assist in resolving an issue related to 'other matters about the performance at work' and the removal of status quo – a provision which during the current agreement has not caused any disruption to the business. The 'other matters about the performance at work' would also give employees the ability to question any company policy or procedure that results in the unfair treatment and/or discipline of an employee.

### Contractors

The SBU conducted a member survey prior to the commencement of negotiations to gauge what members valued most, and what outcomes members were seeking from negotiations. Out of the survey members raised job security as a key area of concern and the SBU sees that the contractor agreement clause is an integral part to job security. The current agreement states "*the purpose of PWCS using contractors is to supplement the work being conducted by current PWCS employees and provide specialist skills to meet business requirements.*" PWCS' proposal is to basically have free range on the use of contractors by only making "available information regarding the use of contractors as early as possible after the decision is made."

The SBU position on contractors is to modify the clause to include "***the purpose of using contractors is not to replace, displace or cause a reduction of PWCS employees to the extent that redundancies would occur.***" However PWCS reject this proposal stating "The SBU's proposed wording seeks to have PWCS 'lock in' how it may run its business and the purposes for which contractors maybe engaged." PWCS' focus towards using contractors in recent times has increased and the contractor clause remains a concern to SBU to ensure our members maintain job security.

### Variation to rosters

From the commencement of negotiations PWCS has had an agenda to reduce the ability for employees to raise questions, and roster variations was no different. PWCS initially proposed that new rosters could be introduced without agreement and by consultation only. The SBU's position has always been, 'open door policy', if a new roster is required, let's sit down, work together and get a roster that suits the needs of both the business and employees.

PWCS' current position is 'rosters by agreement', however have modified the ordinary hours clause, in what the SBU believes is an effort to work around creating rosters by agreement.

### Individual Flexibility Arrangements

The current PWCS agreement flexibility term applies to; arrangements about when work is performed. PWCS' initial negotiation position was that a flexible arrangement could apply to any term under the agreement, however through negotiation, status quo remains on the flexibility term.



## PWCS package proposals

Throughout negotiations PWCS has put a number of packages to employees:

### *PWCS original package – October 2012*

- Dispute Resolution
  - Status Quo removed;
  - Only matters under the agreement or the NES could be disputed;
  - SBU chairperson and secretary part of dispute process.
- Remuneration
  - Leave paid as at work;
  - Base salary increases of 5% per year.
- Rosters without agreement – 4 weeks consultations;
- Refreshment breaks removed;
- Removal of overtime systems and cancellation of overtime payments;
- Trade union training – 80 days;

### *PWCS alternate package - December 2012*

*(Key changes from package above)*

- DSP
  - Chairperson & secretary removed from DSP process;
  - Status quo applies to major change only;
- Remuneration
  - Leave paid as at work – removed
- Flexibility term – applied to all matters in the agreement.
- Unpaid sick leave not provided
  - Trade union training – 40 Days

### *PWCS current offer – April 2013*

PWCS has put this position to the SBU, delivered presentations to the members and is seeking endorsement on the package from the SBU by the 8 May, with a successful vote to take place on the 31 May 2013.

- DSP
  - Matters under the EA, NES and disciplinary matters could be disputed and taken to FWA for conciliation and arbitration
  - Matters about the performance of work however, would be handled via the internal dispute resolution process, allowing the dispute to proceed to General Manager Role within the business.
  - Status quo applies to major change only
- Remuneration
  - Base salary increases of 3.25% per year
  - Freezing of shift premiums
  - Changes to shift relief payments
- Unpaid sick leave – offered at absolute discretion under PWCS policy.
- Ordinary hours of work remains an issue.



### Protected action ballot

The SBU on behalf of the members applied for a protected action ballot which was heard on 8 April 2013. The votes were counted on 2 May 2013 with members voting overwhelmingly to participate in protected action. The SBU will continue to try and pursue a negotiated outcome that provides job security and the necessary protections to employees. For the purpose of advancing claims employees were asked to authorise 10 items of protected action.