

FAIR WORK COMMISSION

Four yearly review of modern awards – Annual leave
AM2014/47

Submissions - Coal Mining Industry Employer Group

1. These submissions are made for the Coal Mining Industry Employer Group (**CMIEG**) in accordance with the Statement of the Full Bench issued on 30 October 2017 ([\[2017\] FWCFB 5649](#)) at [3], following the decision of the Full Bench issued on 19 October 2017 ([\[2017\] FWCFB 5394](#)), in respect of the Draft Determination attached to that Statement.
2. The Draft Determination proposes to delete clause 25.10 of the Black Coal Mining Industry Award 2010 (**BCMI Award**) and replace it with a new clause. This submission deals with the wording of the proposed new clause.

Proposed clause 25.10(c)

3. The CMIEG submits that the wording of clause 25.10(c) be amended to reflect the wording contained in previous versions of the proposed clause as follows:

The employer must give ~~immediate~~ written notice of a temporary shutdown period to any employee who is engaged after the notice is given under paragraph (b) and who will be affected by that period, as soon as reasonably practicable after the employee is engaged.

4. In the Draft Determination, clause 25.10(c) is proposed to state:

The employer must give immediate written notice of a temporary shutdown period to any employee who is engaged after the notice is given under paragraph (b) and who will be affected by that period.

5. The wording proposed by the CMIEG in paragraph 3:
 - (a) reflects the [CMIEG submissions of 11 April 2017](#), at paragraph 3(b), in which the CMIEG respectfully submitted that the clause be amended to remove the reference to "immediate" and to include at the end of the clause "as soon as reasonably practicable after the employee is engaged";
 - (b) the [CMIEG submissions of 18 May 2017](#) setting out an amended version of the provisional revised shutdown clause;

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- (c) the position of the CFMEU as put at the hearing on 4 August 2017 before Justice Ross, that the amendments to 25.10(c) proposed by the CMIEG, as set out at paragraph 3 (above), were not opposed;¹
 - (d) the revised version of the clause set out at Attachment A to the [Directions](#) issued by Justice Ross on 4 August 2017; and
 - (e) the clause proposed in the [CMIEG submissions of 11 September 2017](#).
6. Accordingly, the CMIEG submits that the wording of clause 25.10(c) should be amended so that it is in the form set out above at paragraph 3, which form was not opposed by the union parties.

Reservation of rights

7. In accordance with paragraph [79] of the Decision ([\[2017\] FWCFB 5394](#)), the CMIEG reserves its rights in respect of any matter that may arise from the general review of shutdown terms that has not been determined in the present proceedings in respect of the Black Coal Mining Industry Award 2010.

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Solicitors for the CMIEG

8 November 2017

¹ [Transcript of hearing before Justice Ross in AM2014/47 on 4 August 2017](#) at PN51–54.