

**FAIR WORK COMMISSION**

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

**Submission on behalf of the Coal Mining Industry Employer Group**

**Reply to submission by CFMEU to request for information**

1. This submission is made in reply to the most recent submission of the CFMEU filed on 29 January 2016, responding to a request for information by the Commission about the operation of clause 25.4(a) of the Black Coal Mining Industry Award 2010 (**BCMI Award**). The Commission's request was made in the course of proceedings on 8 December 2015.
2. The Commission's request for information to be provided by the CFMEU arises in the context of its consideration as to whether the Commission's proposed model excessive annual leave accrual clause should be included in the BCMI Award, given the existence of clause 25.4. That existing clause provides for the taking of annual leave to be initiated by an employee or employer. The Coal Mining Industry Employer Group (**CMIEG**) has contended that, given the consensual position of the CFMEU, APESMA and the CMIEG that clause 25.4 be retained, the excessive annual leave clause should not be inserted (see the CMIEG submission dated 25 October 2015). On 21 December 2015, as also requested by the Commission during the proceedings on 8 December 2015, the CMIEG provided a submission and data which indicates strongly that there is no excessive annual leave problem of any significance in the black coal mining industry.
3. The CMIEG submits that the 29 January 2016 submission of the CFMEU:
  - (a) indicates, in an at best impressionistic way that employees on occasions are not able to take annual leave at their preferred time because their employer declines to grant the leave, for the very reason provided for in sub clause 25.4(a) for not granting the leave, normally that granting the leave would affect the operations of the mine;
  - (b) provides no evidence of any relevant contention of disputation over employers' reasons for not granting leave in accordance with sub clause 25.4(a);

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- (c) provides no factual or rational support for including the model excessive annual leave clause in the BCMI Award; and
  - (d) does not detract in any way from the strength of the CMIEG submission that the model excessive annual leave clause should not be included in the BCMI Award.
4. The CMIEG maintains its submission that the model excessive annual leave clause should not to be inserted in the BCMI Award.

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8 February 2016