

FAIR WORK COMMISSION

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

Submissions - Coal Mining Industry Employer Group

1. These submissions are made on behalf of the Coal Mining Industry Employer Group (**CMIEG**) in accordance with the Statement issued by Justice Ross on 15 May 2017 ([2017] FWC 2662) at [4].
2. The CMIEG filed a [proposed revised shutdown clause](#) to replace clause 25.10 of the Black Coal Mining Industry Award 2010 (**BCMI Award**) on 12 May 2017.¹ The CMIEG proposed the clause as an alternative to the provisional shutdown clause set out in the *March 2017 Decision* ([2017] FWCFB 959 at [34]) and in an effort to resolve the issues raised by the interested parties about the provisional shutdown clause.
3. The alternative clause proposed by the CMIEG is opposed by the Construction, Forestry, Mining and Energy Union (CFMEU) and The Association of Professional Engineers, Scientists and Managers, Australia (APESMA).² The Australian Industry Group (AiGroup) has indicated that it would not oppose the clause.³ The Australian Manufacturing Workers' Union (AMWU) has not yet indicated its view in relation to the clause.
4. As the clause proposed by the CMIEG is not consented to by the relevant interested parties, the CMIEG does not press for that clause.
5. The CMIEG confirms that, as set out in its submissions of 11 and 26 April 2017,⁴ it supports the insertion of the provisional revised shutdown clause set out in the *March 2017 Decision* (at [34]) with certain amendments, including those noted by the CMIEG in its submissions of 11 April 2017 and at the hearing on 5 May 2017. For clarity, the text of the provisional revised shutdown clause, as amended, that is supported by the CMIEG is set out in **Annexure A** of these submissions.

¹ [CMIEG submissions dated 12 May 2017](#).

² [APESMA correspondence dated 15 May 2017](#).

³ [AiGroup correspondence dated 15 May 2017](#).

⁴ [CMIEG submissions dated 11 April 2017](#); [CMIEG submissions dated 26 April 2017](#)

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6. The CMIEG notes that the provisional revised shutdown clause is opposed by the CFMEU, APEMSA and AMWU. The AiGroup has also raised issues about certain aspects of the clause.
7. Accordingly, the CMIEG respectfully request that the matter be listed for conference or a directions hearing to programme the matter.

Ashurst Australia
Solicitors for the CMIEG

18 May 2017

ANNEXURE A – PROVISIONAL REVISED SHUTDOWN CLAUSE (AS AMENDED)

25.10 Shutdown

- (a) Clause 25.10 applies if an employer intends to shutdown all or part of its operation for a particular period (temporary shutdown period); and wishes to require affected employees to take leave during that period.
- (b) The employer must give the affected employees ~~one month's~~ 28 days' written notice of a temporary shutdown period or such shorter period as agreed between the employer and the employees affected.
- (c) 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.
- (d) The following applies to any affected employee during a temporary shutdown period:
 - (i) if the employee has accrued an entitlement to paid annual leave the employee may elect to take some or all of the leave during the temporary shutdown period, and may also elect to take unpaid leave to cover any part of the temporary shutdown period, or annual leave in advance in accordance with clause 25.9 (or a combination of accrued annual leave, annual leave in advance or unpaid leave);
 - (ii) if the employee does not elect to take paid annual leave or unpaid leave to cover the whole of the temporary shutdown period, then the employer may direct the employee to take a period of accrued paid annual leave or unpaid leave (or a combination of both) to cover the whole of the temporary shutdown period;
 - (iii) if the employee has not accrued an entitlement to any paid annual leave, the employer may direct the employee to take leave without pay to cover the whole of the temporary shutdown period.
- (e) A direction by the employer to take paid annual leave under clause 25.10(d)~~(ii)~~:
 - (i) must be in writing; and
 - (ii) must be reasonable.
- (f) The employee must take paid annual leave or unpaid annual leave in accordance with a direction under clause 25.10(d)(ii) or (iii).
- (g) In determining the amount of paid annual leave to which an employee has accrued an entitlement, any period of paid annual leave taken in advance by the employee, in accordance with an agreement under clause 25.9, to which an entitlement has not been accrued is to be taken into account.
- (h) When an employer shuts down all or part of its operation under this provision, clauses 25.4 to 25.6 do not apply to employees directly affected by the shutdown and this clause will apply.