



DIRECTIONS

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Annual leave common issue – *Black Coal Mining Industry Award 2010*
(AM2014/47)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 4 AUGUST 2017

4 yearly review of modern awards – Annual leave common issue – shut down provisions – Black Coal Mining Industry Award 2010

Further to the mention on 4 August 2017 the Commission directs as follows:

1. A final hearing to discuss the drafting of clause 25.10 and any related drafting matters will be listed at **9.30 am on Monday, 9 October 2017**.
2. Parties are directed to consider the revised draft set out in [Attachment A](#).
3. Employer parties are directed to file any further evidentiary material by **4.00 pm on Monday, 11 September 2017**.
4. Union parties are to file any response by **4.00 pm on Monday, 2 October 2017**.
5. Leave is granted to apply generally.
6. All material should be sent to amod@fwc.gov.au.

PRESIDENT

Revised draft clause 25.10

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 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 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 leave without pay to cover any part of the temporary shutdown period;

(ii) if the employee does not elect to take paid annual leave or leave without pay 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.

(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 in accordance with a direction under clause 25.10(d)(ii).

(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.