



6 July 2018

Fair Work Commission  
Vice President Catanzariti

via email: [chambers.catanzariti.vp@fwc.gov.au](mailto:chambers.catanzariti.vp@fwc.gov.au)

Dear Ms Lia

**Matter number C2018/3540**

Coal Services wish to advise that Clause 6 of the Coal Services Enterprise Agreement 2017, sub-clause 6.5 requires that if “after the completion of sub-clause 6.4, the dispute remains unresolved, the matter may be referred in writing to the next level of management within five (5) working days of the meeting referred to in sub-clause 6.4...”

Coal Services acknowledges the Applicant lodged a dispute with Coal Services on 5 June 2018 under clause 6, sub-clause 6.4, and subsequent meetings were held in relation to the matters raised on 6 June 2018, 13 June 2018 and 22 June 2018, however, at no point was Coal Services notified per the conditions of sub-clause 6.5 that the matter remained unresolved and the Applicant did not refer the matter in writing to the next level manager.

As such, Coal Services submits that these conditions have not been met and all internal dispute mechanisms have not been exhausted before lodging a dispute with the Commission.

Notwithstanding the abovementioned issue and with regard to the matters raised by the Community and Public Sector Union (CPSU) to the Commission, Coal Services submits the following in response to dispute matters raised in 2.1 of the Form 10:

1. Coal Services made a formal announcement to Coal Mines Insurance (CMI) employees on 28 May 2018 of its intention to commence consultation regarding a business plan to transform its operating model. For many months prior to this announcement however, Coal Services has held regular meetings (12 December 2017, 8 February 2018, 20 February 2018, 4 April 2018, 8 May 2018) with the Applicant and delegates to discuss matters raised in relation to information being provided in the lead up to this announcement. Since July 2016, CMI employees have been provided information in relation to the IPIM program, the Argenton Trial and the Case Management Manual via an Intranet portal and regular ‘All Staff Forums’.

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2. On 5 June 2018, the Applicant lodged a dispute with Coal Services. A meeting that had been convened for 6 June 2018 was used to respond to the matters raised. The matters in dispute per the notification provided to the Head of Human Resources on 5 June 2018 were:
  - a. **Clause 36:** *Lack of information, specifically with regard to the 'Argenton Model' and the 'Case Management Manual'*. Both these documents have been available since March 2017, however notwithstanding this fact, Coal Services provided the CPSU with copies of these documents in October 2017 and again during the meeting on 6 June 2018.
  - b. **Clause 72, 73:** *Classifications and salary bandings being varied*. During the meeting it was explained to the CPSU that CMI employees had requested an indication as to where the proposed new positions sat in relation to the classifications within the Coal Services Enterprise Agreement 2017. Direct feedback from employees to Coal Services suggested that they were requesting this information in order to make a more informed decision in relation to particular roles. On 4 June 2018 employees and the CPSU were provided with a table of indicative salary ranges and the proposed classification level for each of the new positions. At no point was it expressed or inferred that the upper level of the salary range was "a ceiling".
  - c. **Clause 74:** *Classification Framework and members being unable to ascertain their futures without Argenton Model and Case Management Manual*. On 7 June 2018, 13 June 2018 and 14 June 2018, CPSU and employees were provided with copies of the following documents aimed at providing employees with more information; 'Claims Management Process Map', 'Finding Information on the IPIM Intranet Site about the New Roles' and 'CMI Business Line Functional Structure'.
  - d. **Clause 75:** *Request to Coal Services to extend the current EAP services to Workers' Health Centre*. Coal Services contacted this provider on 12 June 2018 and 14 June 2018 without success. The CPSU Industrial Officer, at the request of Coal Services, provided contact details of the Workers' Health Centre CEO, Michelle Burgess. Coal Services made contact with Ms Burgess on 18 June 2018. In a follow-up email to Ms Burgess on that same day, Coal Services requested information in relation to their EAP services, outplacement services and cost structure. To date Coal Services has not received a response from this provider despite a follow-up email on 27 June 2018.
3. Coal Services submits that work is continuing in the normal manner and the status quo remains. It is Coal Services view that the provisions under Clause 6.9 are not intended to override the provisions under Clause 36 by placing a moratorium on consultation.
4. The first indication Coal Services had of the dispute remaining unresolved was via an email sent by Ms Maryanne Stuart on 27 June 2018 advising Coal Services that the matter had been lodged with the Fair Work Commission. As a consequence Ms Stuart cancelled a pre-arranged meeting intended to discuss additional matters raised in the meeting of the 6 June 2018 but not in dispute.
5. Per point 4 above, Coal Services were not aware that a dispute remained unresolved. Under Clause 36, Coal Services continued to provide documentation and information to employees regarding the proposed changes. Any decisions made regarding certain jobs being advertised where made with the understanding and agreement from the CPSU that

this would occur. Specifically, on 22 June 2018 the CPSU requested that Coal Services extend the application process for the Head of Operations Management and Head of Performance Assessment for a further five (5) days. Coal Services agreed to this request. On the 25 June 2018 Coal Services called the CPSU Organiser, Ian Braithwaite, to notify of its intention to extend the application process for the abovementioned roles. At the same time, he was provided with a copy of the email to all CMI staff informing them of said extension. At no stage did he express to Coal Services that this matter was in dispute and remained unresolved.

Notwithstanding these matters in dispute, during the meeting on 6 June 2018, the CPSU also raised issue in relation to the Expression of Interest (EOI) and Voluntary Redundancy (VR) processes as well as the status of Position Descriptions (PDs) being in 'draft'.

Rather than closing EOIs on 12 June 2018, Coal Services agreed to hold the EOIs open "for as long as needed to allow everyone time to explore all options available to them". Subsequently the VR process would remain open until such time as all recruitment was completed. This was confirmed in a communication to the CPSU and employees on 18 June 2018.

Furthermore, Coal Services has since resolved the matter of PDs by considering and in some cases accepting suggested amendments and subsequently finalising these documents. These documents were re-issued on 26 June 2018.

Finally, it is important to note that on many occasions beginning with the most recent Enterprise Agreement negotiations with the CPSU, that it was pointed out by Coal Services management that the proposed CMI restructure was essential for the survival of the business and the ability of the business to provide higher pay outcomes into the future. In this regard, Coal Services relies on clause 6.9(a) of the dispute settlement procedures specifically "...if the matters in dispute involve proposed changes, then the proposed changes will not be implemented unless not to do so would unduly disrupt the work of Coal Services or have significant negative financial impact..."

Should you have any queries please do not hesitate to contact this office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B.G. Grimshaw', with a long horizontal flourish extending to the right.

**Bruce Grimshaw**  
Company Secretary/Legal Counsel