HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	S161/2025
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Important Information

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Form 27F – Outline of oral submissions

Note: see rule 44.08.2.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

COAL MINING INDUSTRY (LONG SERVICE LEAVE FUNDING) CORPORATION

Appellant

and

ORICA AUSTRALIA PTY LTD

Respondent

INTERVENER'S OUTLINE OF ORAL SUBMISSIONS

Part I

1 This outline is in a form suitable for publication on the internet.

Part II

2 This outline adopts the terms defined in Dyno Nobel's outline of submissions filed on 27 February 2026.

3 An explosives manufacturer supplying shot firing and explosives services to the coal mining industry in circumstances where it has no other participation in the coal mining industry, is not an employer of eligible employees within the meaning of the Administration Act. This is because, to be an "eligible employee" an employee must, inter alia, be employed in the black coal mining industry.

4 The Administration Act expressly defers to, and adopts, the Award definition of coal mining industry; the Award expressly excludes from the "(black) coal mining industry" the activities of the Intervenor company and its employees (at all relevant times) and of the Respondent and its employees (post Minova).

5 That state of affairs is clear on the plain meaning of the relevant provisions of the Administration Act and Award. There is no ambiguity in either instrument.

6 The exclusions are by reason of their activities falling within the scope of the exclusion in clause 4(g) of the Award: "The supply of shot firing or other explosive services by an employer not otherwise engaged in the black coal mining industry".

7 The exclusion is of an activity, namely "the supply ..... of services". The reference to "an employer" is secondary in that the source of the supply is identified and confined by reference to the nature of the same employer's business. The reference does not, when read in context, serve to confine the exclusion to employers and leave employees outside of the exclusion.

8 When supply is characterised as an activity it embraces both the employer as the source of the supply and, the employees of the employer engaged in the activity.

9 This characterisation of paragraph (g) of the list of exclusions as a description of activity is in harmony with the other exclusions listed in clause 4.3 of the Award. Each of the other 6 is an activity.

10 Specifying the numerous exclusions by reference to activities is in harmony with the broad category to which the exclusions are directed, namely, the black coal mining industry; a suite of activities make up an industry; in this instance, some activities, as expressed in clause 4.3 of the Award are expressly excluded.

11 The MEU proposition that, in short, an employer supplier of explosive services is excluded, but its employees remain included in the black coal mining industry is inconsistent with the context of the Award exclusions – and their history.

12 The specific mention in clause 4(g) of the exclusion list, of "shot firing" is self evidently a manifestation of the intent of the Award maker to exclude specified activities that occur off-site and/or on-site at a black coal mine. That exclusion of

on-site activities involved in the supply of shot firing and explosive services to black coal mines, is clearly attributable to the history of cases which draw the industrial boundary around the black coal mining industry. We note, in particular, the Full Bench Decision of the AIRC in the *Dyno Nobel Case* and also clause 4.2 of the Award which states that "black coal mining industry" has the meaning applied by the courts and industrial tribunals.

13 The MEU proposition that, in short, an employer supplier of explosive services is excluded, but its employees remain included in the black coal mining industry is inconsistent with the context of the Award exclusions – and their history.

14 The majority of the Full Federal Court reached the correct decision.

Dated: 2 April 2026

J E Murdoch KC

Senior legal practitioner presenting the case in Court