HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 09 Apr 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number:	S161/2025
File Title:	Coal Mining Industry (Long Service Leave Funding) Corporati
Registry:	Sydney
Document filed:	Mining and Energy Union - Form 27F - Intervener's Outline o
Filing party:	Interveners
Date filed:	09 Apr 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY
BETWEEN: COAL MINING INDUSTRY (LONG SERVICE LEAVE FUNDING) CORPORATION

Appellant

and

ORICA AUSTRALIA PTY LTD

Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE MINING AND ENERGY UNION

PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1. Courts and industrial tribunals regularly consider the drafting history of industrial awards in resolving disputes about their construction: see, eg, *Pickard v John Heine & Son Ltd* (1924) 35 CLR 1 at 9-10. The history is a guide to the "industrial realities" that inform the meaning of these kinds of instruments: see, eg, *City of Wanneroo v ASU* (2006) 153 IR 426 at [57] (**JBA Vol 4, Tab 22**).

2. The MEU has brought forward the publicly available drafting history of the BCMI Award in its written submissions. The drafting history is legislative fact material relevant as extrinsic material to the interpretation of that instrument, which this Court may consider in its appellate jurisdiction: *Allianz Australia Insurance Limited v Estate of the Late Summer Abawi* (2025) 117 NSWLR 355 at [56]. The BCMI Award is an instrument to which the *Acts Interpretation Act 1901* (Cth) applies: see AIA, s 46; *Legislation (Exemptions and Other Matters) Regulation 2015* (Cth) cl 7 item 15 of the table.

3. Clause 4.3(g) reflects or responds to *CFMEU v Dyno Nobel Asia Pacific Ltd* [2005] AIRC 622 (**JBA Vol 4, Tab 24**) (**MEU [27-[32]**), but to what extent / in what manner?

   3.1. The conclusion at [59] that an employer which provides some shotfiring services to coal mines is not engaged in the coal and shale industry merely on that account appears to be closely reflected in the text of cl 4.3(g).

   3.2. The conclusion at [16] and [64] that all of Dyno Nobel's employees were not engaged in the coal and shale industry because Dyno Nobel was not engaged in the

coal and shale industry depended on an employee's industry being tied to their employer's industry in accordance with the approach to union eligibility rules in *R v Hibble; Ex parte Broken Hill Proprietary Co Ltd* (1921) 29 CLR 290 and is not consistent with the BCMI Award as a whole; cl 4.1(b)(ii) deliberately does not tether the employee's industry to that of their employer: **MEU [19]-[22], [33]**.

4. [3.1] above gives Clause 4.3(g) real work to do. An employer such as Dyno Nobel may employ staff who perform work that is directly connected with the day-to-day operation of a black coal mine but who perform that work away from the mine itself (eg, a person integral to scheduling the shotfiring work or maintenance at an offsite depot or town office). Those employees would not fall within cl 4.1(b)(ii), and cl 4.3(g) ensures that they would also not fall within cl 4.1(b)(i).

Dated: 9 April 2026

Christopher Tran
Fifth Floor St James' Hall
T: (02) 8257 2578
E: christopher.tran@stjames.net.au

Alistair Sage
Mining and Energy Union
T: (02) 9267 1035
E: asage@meu.org.au