



Fair Work Commission: 4 yearly review of modern awards

**SUBMISSIONS IN REPLY:
AM2016/35 ABANDONMENT OF EMPLOYMENT**

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

1 JUNE 2017

1. BACKGROUND

1.1 Pursuant to the Fair Work Commission's (**Commission**) Directions of 27 April 2017, interested parties were directed to:

- (a) file submissions in relation to whether the "abandonment of employment" provisions in the six identified Modern Awards¹ are terms that may be included in Modern Awards under Subdivision B of Division 3 of Part 2-3 of the *Fair Work Act 2009* (Cth) (the **FW Act**) by 18 May 2017; and
- (b) file any written reply submissions by 1 June 2017.

1.2 These reply submissions are made on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**). ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009*. NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009*.

1.3 ABI and NSWBC have a material interest in the following Modern Awards:

- (a) Manufacturing and Associated Industries and Occupations Award 2010;
- (b) Business Equipment Award 2010;
- (c) Contract Call Centres Award 2010;
- (d) Graphic Arts, Printing and Publishing Award 2010; and
- (e) Nursery Award 2010.

1.4 However, this submission has general application to all the identified Modern Awards that contain abandonment of employment provisions.

1.5 This reply submission takes into account the written submissions already before the Commission specifically:

- (a) the Australian Manufacturing Workers' Union submission dated 18 May 2017;
- (b) the CFMEU - Construction and General Division submission dated 18 May 2017;
- (c) the Australian Workers' Union submission dated 18 May 2017;
- (d) the Community and Public Sector Union submission dated 18 May 2017;
- (e) the Australian Industry Group amended submission dated 22 May 2017.

2. SUMMARY

2.1 This reply submission addresses two issues:

- (a) Firstly, whether or not ABI and NSWBC consider that the existing "abandonment of employment" provisions in the six Modern Awards are inconsistent with the FW Act; and

¹ Manufacturing and Associated Industries and Occupations Award 2010; Business Equipment Award 2010; Contract Call Centres Award 2010; Graphic Arts, Printing and Publishing Award 2010; Nursery Award 2010; and the Wool Storage, Sampling and Testing Award 2010.

- (b) Secondly, whether ABI and NSWBC agree with the proposal put forward by AI Group to amend the six identified Modern Awards..

3. INCONSISTENCY WITH THE FW ACT

3.1 We agree with the submissions already before the Commission, that “abandonment of employment” clauses (in their current form) are not terms permitted by the FW Act to be in Modern Awards in accordance with the findings of the Full Bench of the Fair Work Commission in *Boguslaw Bienias v Iplex Pipelines Australia Pty Limited [2017] FWCFB 382*.

3.2 In light of the apparent inconsistency with the FW Act, ABI and NSWBC do not oppose the removal of “abandonment of employment” clauses from the Modern Awards in which they have an interest.

4. AI GROUP PROPOSAL

4.1 AI Group agrees that the “abandonment of employment” clause in the six identified Modern Awards should be deleted, but that it should be replaced with the following amendment to the “notice of termination” clause:

22.2 Notice of termination by an employee

(a) The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

(b) If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

(c) Subclause (b) applies in circumstances where termination is at the initiative of the employee, including circumstances where an employee abandons his or her employment.

4.2 ABI and NSWBC do not oppose the submission of AI Group and consider that the variation may serve to clarify the operation of the existing provisions. Whether the proposed variation satisfies the relevant legislative requirements (notably ss 139 or 142) is a matter for AI Group to address and the Commission to determine.

4.3 ABI and NSWBC would suggest, if the variation is found to satisfy the requirements of s142, then the proposed change would be one appropriately characterised as “*self evident and [thus one which] can be determined with little formality*”.²

5. ORAL SUBMISSIONS

5.1 At this stage, ABI and NSWBC do not seek to make oral submissions in these proceedings.

² See [2014] FWCFB 1788 at [23] and [60]

Luis Izzo
Director

Australian Business Lawyers & Advisors Pty Limited
(02) 9458 7640
Luis.izzo@ablawyers.com.au

Sophie Whish
Lawyer

Australian Business Lawyers & Advisors Pty Limited
(02) 9458 7431
Sophie.whish@ablawyers.com.au

On behalf of Australian Business Industrial and the NSW Business Chamber Ltd

1 June 2017