

**IN THE FAIR WORK COMMISSION**

**Matter No.:** AM2016/35 Abandonment of Employment

**Submission of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU), Australian Workers' Union (AWU), Community and Public Sector Union (CPSU), Construction, Forestry, Maritime, Mining and Energy Union - Construction and General Division (CFMMEU C&G) and Australian Services Union (ASU)**

**4 Yearly Review of Modern Awards**

**COVER SHEET**

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## Introduction

1. The Australian Manufacturing Workers' Union (AMWU), Australian Workers' Union (AWU), Community and Public Sector Union (CPSU), Construction, Forestry, Maritime, Mining and Energy Union - Construction and General Division (CFMMEU C&G) and the Australian Services Union (ASU) (the Unions) make the following submission to the Fair Work Commission in response to Directions issued by Deputy President Gostencnik in the 4 yearly review of modern awards for AM2016/35 Abandonment of employment 7 August 2018.<sup>1</sup>
2. This submission outlines the Unions' view about the FWC's "Reasonable inquiries about certain absences" draft clause<sup>2</sup> and the reasons for the Unions' view.

## The FWC's "Reasonable inquiries about certain absences" draft clause

3. The FWC's draft clause is as follows:

### **"21 Reasonable inquiries about certain absences**

- 21.1 This clause applies to an absence from work by an employee of 3 or more consecutive working days where the whole of the absence is not authorised or explained, or occurs without notification to the employer given before or as soon as practicable after the first day of the absence commences.
- 21.2 If an employee is absent from work as described in in subclause 1, the employer shall take reasonable steps to:
  - a. contact the employee;
  - b. provide the employee with an opportunity to explain the absence from work; and
  - c. give genuine consideration to any explanation provided by the employee."

## The Unions' position

4. The Unions' support the FWC's draft clause and no longer press any of the draft clauses originally sought:
  - a. By the AMWU, provided in its submissions 20 February 2018;<sup>3</sup> or
  - b. By the AWU, provided in its submissions 8 March 2018;<sup>4</sup>

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<sup>1</sup> [Directions in AM2016/35 Abandonment of employment 7 August 2018](#)

<sup>2</sup> [FWC Draft Clause "Reasonable inquiries about certain absences" 7 August 2018](#)

<sup>3</sup> [AMWU submission in AM2016/35 Abandonment of employment 20 February 2018](#)

<sup>4</sup> [AWU submission in AM2016/35 Abandonment of employment 8 March 2018](#)

5. The Unions understand that the FWC's draft clause addresses the issues which were being addressed through the AMWU and the AWU's proposed clauses, while remaining succinct.
6. In particular, the FWC clause implicitly requires the employer to undertake the reasonable inquires before taking any action against or relating to the employee concerned.
7. The FWC clause requirement of "reasonable steps" would require all available means be used to contact an employee who has become uncontactable by normal means.
8. The FWC clause also ensures that employers take reasonable steps to provide employees with time to explain the absence. The Unions understand that "reasonable steps" in relation to providing an opportunity for the employee, would mean that the amount of time provided to an employee would depend on the particular circumstances of the situation.
9. The exclusion of the note to section 352 does not have any legal effect because section 352 has force whether or not there is a note.
10. For these reasons the Unions support the FWC's draft clause.

**End**

**28 August 2018**