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21 February 2018

Vice President Hatcher
Fair Work Commission
80 William Street
East Sydney NSW 2011

Dear Vice President

Re. AM2016/35 – Abandonment of Employment

We refer to the Commission's decision ([2018] FWC 139) of 23 January 2018 concerning the abandonment of employment clause in the *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)* and five other awards.

At paragraph [35] of the decision, the Full Bench stated:

[35] We propose to invite interested parties to file proposals for a provision to replace the current clause 21 in the *Manufacturing Award*, and the equivalent provisions in the other five awards, having regard to our reasons for decision. We will allow 28 days for this to occur. We also invite interested parties to confer and, if they wish to do so, participate in a conference conducted by a member of the Commission, in order to try to reach a consensus position about a replacement provision. We will not make determinations to delete the relevant provisions from the *Manufacturing Award* and the other five awards until a standard replacement provision has been determined.

Ai Group proposes that the clause in Attachment A to this correspondence be inserted into the Manufacturing Award with similar clauses inserted into the other five awards.

We have discussed the attached clause with the Metal Trades Federation of Unions and with Australian Business Industrial and the NSW Business Chamber. Agreement has not been reached with the unions on the terms of the clause. Ai Group would be happy to participate in a conference conducted by a Member of the Commission in order to try to reach agreement on the terms of the abandonment of employment clause.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Smith'.

Stephen Smith
Head of National Workplace Relations Policy



ATTACHMENT A

PROPOSED ABANDONMENT OF EMPLOYMENT CLAUSE

21. ABANDONMENT OF EMPLOYMENT

21.1 This clause prescribes consultation obligations in circumstances of abandonment of employment by a full-time or part-time employee.

21.2 **Meaning of *abandonment of employment***

For the purposes of this clause:

- (a) ***Abandonment of employment*** means a situation where an employee ceases to attend his or her place of employment without proper excuse or explanation and thereby evinces an unwillingness or inability to substantially perform his or her obligations under the employment contract.
- (b) The test of whether abandonment of employment has occurred is whether the employee's conduct is such as to convey to a reasonable person in the situation of the employer a renunciation of the employment contract as a whole or the employee's fundamental obligations under it.
- (c) Where abandonment of employment has occurred, the employment relationship has ended as a result of the employee's renunciation and the employment is not terminated at the initiative of the employer.

21.3 **Consultation obligation**

If an employee has been absent from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer, the employer must, before confirming the termination of employment by the employee due to abandonment of employment, make reasonable endeavours to:

- (a) contact the employee; and
- (b) provide an opportunity for the employee to give an explanation for the absence.

21.4 This clause only deals with abandonment of employment. Nothing in this clause detracts from the rights of an employer to lawfully terminate the employment of an employee.