



# STATEMENT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **Abandonment of Employment – Common Issue**

(AM2016/35)

VICE PRESIDENT HATCHER  
DEPUTY PRESIDENT GOSTENCNIK  
COMMISSIONER CRIBB

SYDNEY, 16 AUGUST 2017

*4 yearly review of modern awards - abandonment of employment.*

[1] This is an edited version of a statement given on transcript at the conclusion of the hearing in this matter on 14 August 2017.

[2] This proceeding is concerned with clause 21 of the *Manufacturing and Associated Industries Occupations Award 2010* (Manufacturing Award) and its equivalents in a number of other modern awards. The primary question which arises for determination in the proceeding is whether clause 21 is, under the *Fair Work Act 2009* (Cth) (FW Act), a term about a matter which is permitted to be included in a modern award.

[3] In the decision in *Boguslaw Bienias v Iplex Pipelines Australia Pty Limited t/a Iplex Pipelines Australia*<sup>1</sup> (Decision), the Full Bench expressed the view that clause 21, if interpreted in the way contended for by the employer in that case - that is, that the clause effected automatic termination of the employee if a deemed abandonment of employment arose would not be a permitted matter under the FW Act. However, it should be made clear, and we think this was made absolutely clear in the Decision, that this interpretation of the clause advanced by the employer was rejected by the Full Bench. Therefore, the Decision cannot be read as expressing any definitive view about the permissibility of clause 21.

[4] We therefore, again, invite submissions concerning whether clause 21 is a permitted matter under the FW Act having regard to the interpretation that the Full Bench placed upon the clause in the Decision. We propose to allow the parties a further 21 days to make submissions about that question in writing.

[5] We regard clause 22 of the Manufacturing Award and its equivalents in other modern awards as a separate issue which is beyond the remit of this Full Bench in this proceeding. If any party seeks a variation to clause 22, they should do so by way of separate application. Any such application will then be dealt with as determined by the President of the Commission.

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<sup>1</sup> [2017] FWCFB 38

[6] There may be a separate issue about whether clause 22 is a permissible term given that it purports to permit a denial of NES entitlements in certain circumstances. However, we likewise do not regard that as a question to be determined in this proceeding. The parties will be notified if the Commission considers this to be a matter requiring determination; but if that were to occur, it would happen in a separate proceeding before a Full Bench as allocated by the President.



VICE PRESIDENT

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