

IN THE FAIR WORK COMMISSION

2014 Award Review

(AM2016/35)

Community and Public Sector Union (CPSU) (PSU Group)

Submissions re: Abandonment of employment

Introduction

1. On 27 April 2017, Vice President Hatcher issued Directions for the filing of submissions in relation to whether the 'Abandonment of employment' provisions in six awards are terms that may be included in a modern award. These submissions are made pursuant to those Directions.
2. The CPSU represents members covered by the *Contract Call Centre Award 2010*, which is one of the six award identified in the statement of President Ross of 1 February 2017 as containing an 'Abandonment of employment' clause.

Contract Call Centres Award 2010

3. This award contains an 'Abandonment of employment' provision in the following terms:

16. Abandonment of employment

16.1 The absence of an employee from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer will be prima facie evidence that the employee has abandoned the employment.

16.2 Provided that if within a period of 14 days from the employee's last attendance at work or the date of the employee's last absence in respect of which notification has been given, or consent has been granted, an employee has not established to the satisfaction of the employer that the employee is absent for reasonable cause, the employee will be deemed to have abandoned the employment.

16.3 Termination of employment by abandonment in accordance with this clause will operate as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to the employer, whichever is the later.

The decision in Iplex

4. The Full Bench in *Mr Boguslaw Bienias v Iplex Pipelines Australia Pty Limited T/A Iplex Pipelines Australia [2017] FWCFB 38* considered an 'Abandonment of employment' clause in the *Manufacturing and Associated Industries Occupations Award 2010*. In its decision, the Full Bench found that clause, *inter alia*, was not one which could be included in a Modern Award under s134 of the *Fair Work Act 2009*.
5. On the basis of the reasoning in *Iplex*, the CPSU says the similarly phrased provision contained in the *Contract Call Centre Award 2010* suffers the same defects. The CPSU say there is no basis for this Full Bench to depart from the reasoning in the *Iplex* decision.
6. Thereby that clause is not a matter which can be contained in the *Contract Call Centre Award 2010* and should be removed as part of the 2014 Modern Award Review.

19 May 2017

CPSU - SYDNEY