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Sent: Monday, 26 October 2020 9:57 AM

To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>; AMOD <AMOD@fwc.gov.au>

Cc: Tamsin Lawrence <Tamsin.Lawrence@australianchamber.com.au>

Subject: AM2020/95 - Clerks Private Sector Award 2020

Dear Sir/Madam

I refer to the Statement issued in these proceedings on 14 October 2020.

Please find **attached** submissions filed on behalf of ACCI in response to the Statement, together with a draft survey with amendments in markup.

Yours sincerely

Luis Izzo

Managing Director – Sydney Workplace
Australian Business Lawyers & Advisors

IN THE FAIR WORK COMMISSION

AM2020/95

4 YEARLY REVIEW OF MODERN AWARDS

CLERKS - PRIVATE SECTOR AWARD 2020

SUBMISSIONS OF ACCI IN RESPONSE TO 14 OCTOBER 2020 STATEMENT

1. INTRODUCTION

- 1.1 On 14 October 2020, the Commission issued a Statement in these proceedings in which the Commission proposed to survey the members of ACCI and Ai Group regarding working patterns of clerical employees since 1 July 2020.
- 1.2 The Statement circulated the draft terms of a proposed survey (**the Survey**) and requested ACCI and Ai Group to confirm whether they would circulate the Survey amongst their membership.
- 1.3 The Statement also sought feedback on the Survey questions.

2. CIRCULATION OF SURVEY

- 2.1 As the Commission is aware, ACCI is a peak council of employer organisations. ACCI does not commonly secure individual businesses as members. Rather, ACCI's membership is made up of other State chambers of commerce as well as industry-based employer associations, each of which have individual businesses as members.
- 2.2 Accordingly, ACCI is not in a position to circulate the Survey to a significant number of individual businesses itself.
- 2.3 However, ACCI has asked a particular part of its membership, namely, the State chambers of commerce in each State and Territory (**the State Chambers**), to circulate the Survey.

- 2.4 Each of these State Chambers have substantial numbers of individual businesses as members. When combined, the State Chambers have tens of thousands of businesses subscribed to State Chamber membership.
- 2.5 All of the State Chambers have indicated a preparedness to circulate the Survey, subject to agreement being reached regarding the finalised content of the Survey.
- 2.6 ACCI previously indicated to the Commission that ACCI and its members were intending on surveying their membership about working from home arrangements prior to the Commission circulating its proposed survey.¹ ACCI has identified the survey of its members as particularly important, given that the ACTU has already conducted a survey of its membership regarding these issues² and some dispute about working from home arrangements between the parties appears likely.
- 2.7 It is accordingly important to ACCI and its members that if any Survey is sent out on behalf of the Commission to the ACCI membership, the Survey addresses the types of matters ACCI was intending to address before its own survey process was consolidated into the Commission's survey process.

3. FEEDBACK ON SURVEY QUESTIONS

- 3.1 ACCI has reviewed the terms of the Survey as currently drafted.
- 3.2 ACCI has feedback on the Survey questions, which is focused on addressing the following types of issues:
- (a) The necessity of some questions has been queried. This issue has been raised because, in order to improve survey responsiveness, it will be necessary to keep the survey as brief as possible.
 - (b) A number of new questions have been proposed to address additional matters. As indicated above, there are some matters which ACCI considers it

¹ See 30 September 2020 transcript of proceedings AM2020/95 at PN135

² See 30 September 2020 transcript of proceedings AM2020/95 at PN109

important to understand regarding current and planned working from home practices. Given that ACCI is unlikely to be issuing its own survey in the near future (to avoid survey overlap and fatigue), ACCI respectfully requests that the new questions are included to address these additional matters.

3.3 To assist in providing ACCI's feedback, we have attached to this submission a marked-up copy of the Survey for the Commission's benefit.

3.4 The specific amendments proposed are addressed separately below. The question number references in the subheadings below are references to the numbers contained in ACCI's marked up version of the Survey.

Question 1

3.5 The Note explaining when the Clerks Award covers employees has been removed.

3.6 This is because ACCI considers that the note may confuse some respondents. The Note talks about employers "*using*" the Clerks Award to "*set pay and conditions*" for employees.

3.7 However, it is quite common for clerical employees covered by the Award to be engaged on common law contracts or salaries as opposed to being engaged specifically on the terms of the Award. In such circumstances, the Award still applies to the employees, even if employers do not "*use the Clerks Award to set pay and conditions*".

3.8 The Note is effectively asking a different question to that asked in Question 1.

3.9 Having regard to these concerns, ACCI considers that the simplest course of action is to delete the Note.

Questions 3

- 3.10 ACCI has qualified this question pertaining to the number of employees that are employed by asking “*approximately how many employees...*”.
- 3.11 The purpose of this amendment is to allow employers to respond to the question promptly (giving approximations of employee counts), without taking additional time to obtain forensic data regarding exact employee numbers.

COVID-19 Response Heading

- 3.12 ACCI has inserted a heading prior to question 6 in order to assist employers in consider the context in which they are responding to the question contained in this section.
- 3.13 This also assists in distinguishing questions 5 to 13 from subsequent questions which are about intended future working arrangements (questions 14 and following).

Question 5

- 3.14 ACCI has qualified this question pertaining to the number of employees that are employed and have been working from home by asking “*approximately how many employees...*”.
- 3.15 The purpose of this amendment is to allow employers to respond to the question promptly (giving approximations of employee counts), without taking additional time to obtain forensic data regarding exact employee numbers.

Question 6

- 3.16 Question 6 seeks to obtain demographic data regarding the gender of clerical employees.
- 3.17 Whilst this information might have some marginal relevance, the focus of the Survey is about:
- (a) the prevalence of working from home;

- (b) whether employees have sought to change their working hours when working from home;
- (c) why working hours have been changed; and
- (d) (at the Commission's initiative) whether any additional support is being provided when working from home.

3.18 The gender of employees does not directly relate to these matters.

3.19 Given the need for a short survey to increase respondency, ACCI submits that this question can be removed without prejudicing the probative value of the data collected.

Questions 6 and 8

3.20 Question 6 appears to address two matters:

- (a) whether employees have changed their working patterns; and
- (b) why employees may have changed their working patterns.

3.21 This question goes to the heart of the issues the Survey is intending to explore. In particular, the Statement has identified an "*evidentiary gap*" regarding the "*incidence of working from home arrangements amongst employees*" (at [9]).

3.22 ACCI considers it appropriate to separate Question 6 into two Questions (Question 6 and Question 8) which separately address:

- (a) whether employees have changed their working patterns; and
- (b) why employees may have changed their working patterns.

3.23 This will allow for more specific data to be collected about these issues.

Question 9

- 3.24 Should the Commission consider varying the Clerks Award to address working from home arrangements, it is possible ACCI may wish to vary the way in which breaks are taken or recorded.
- 3.25 For this reason, ACCI respectfully requests that Question 9 be included in the Survey.

Question 10

- 3.26 ACCI's experience has been that a number of employers have provided employees with equipment to work from home that has been sourced from existing office supplies (as opposed to additional new equipment).
- 3.27 This does not appear to be expressly caught by Question 10. Accordingly, an additional prompted response has been added.

Question 11 (deleted content)

- 3.28 ACCI is very reluctant to ask employers to submit their working from home policies as this will likely affect the anonymity of the survey responses. This is the only question from which the identity of the employer can be determined and may dissuade participation or expose employers to increased scrutiny.
- 3.29 If the request to attach a working from home policy is removed (as requested by ACCI), the probative value of the remaining aspects of the question is unclear: it appears few inferences could be drawn regarding what measures are being implemented by employers in response to working from home by simply asking whether a working from home policy exists.

Question 12

- 3.30 ACCI has added a question about employees working from home until 11pm.

3.31 The prevalence of employees working at this time is important so that the Commission can understand all the types of hours employees are commonly working from home.

Questions 14-16 (new section and included content: future working from home arrangements)

3.32 ACCI wishes to obtain an understanding of the difference (if any) between working from home changes as a response to the COVID_19 pandemic and future working from home arrangements anticipated by employers including when working from home arrangements cannot or should not be accommodated.

3.33 This evidence will be important should the Commission be called upon to consider any claim for rights to request working from home arrangements.

3.34 For this reason, Questions 14 to 16 have been included.

Filed for and on behalf of ACCI by Australian Business Lawyers & Advisors

26 October 2020

The Clerks Award & working from home during COVID-19

The Fair Work Commission wants to understand how businesses with employees covered by the Clerks Award have adapted to working from home during the COVID-19 pandemic.

Complete this survey if:

- You are an employer
- You have employees covered by the Clerks – Private Sector Award 2020 (the Clerks Award).

Please **do not** complete this survey if you have an **Enterprise Agreement** in place which covers all of your employees who would otherwise be covered by the Clerks Award.

You should only complete the survey **once**, regardless of how many times you have received an invitation to complete the survey.

What will the survey ask?

We will ask you about **your business and your employees**. The survey includes questions about where your business is, how many employees you have and how many employees are covered by the Clerks Award.

We will also ask you about any **working from home arrangements** accessed by your employees. The survey includes questions about any changes to how your employees are working their hours while they're at home. It also includes questions about what extra help, if any, you've provided.

How do I know if my employees are covered by the Clerks Award?

The [Clerks Award](#) covers employees who mainly carry out clerical and administrative work in the private sector.

This includes:

- filing and photocopying
- typing and word processing
- managing payroll, accounts, invoices and orders
- billing clients and customers
- maintaining records and journals, including payroll
- answering calls
- cash handling
- operating a telephone switchboard
- attending a reception desk

- secretarial and executive support services.

Examples of employees covered by the Clerks Award include:

- an administrative assistant
- a receptionist in an accounting firm
- a bookkeeper in a manufacturing company
- a clerical employee in a retail head office

If you're still not sure, you can check with the [Fair Work Ombudsman](#).

What will we do with your responses?

The Commission will use your responses to understand how the flexibility provisions in the Clerks Award are being used by employees and employers during the COVID-19 pandemic.

Survey responses will remain confidential. We will not be able to identify you by your responses.

If you have any questions or concerns about your privacy or how the data will be used, please contact X

Your business and employees

1. Does your business have any employees covered by the Clerks Award?

Yes

No — End survey. Thank you for participating.

2. Does your business have an enterprise agreement?

Yes — Go to question 2.1

No — Go to question 3

2.1. Does your enterprise agreement cover any employees who would otherwise be covered by the Clerks Award?

Yes, all of them — End survey. Thank you for participating.

Yes, some of them — Go to question 3

No — Go to question 3

3. Approximately how many employees does your business currently employ?

4. How many of your employees are covered by the Clerks Award (Don't count any employees covered by an enterprise agreement)?

COVID-19 Response

5. Approximately how many of your Clerks Award employees have been working from home some or all of the time since 1 July 2020? (You should include all employees working from home during this period, not just employees who started working from home after 1 July 2020).

6. Of the employees covered by the Clerks Award working from home since 1 July 2020, have any of them changed their working hours when working from home? Tick all that apply.

No change – Go to question 10

Yes–Starting earlier than usual

Yes–Finishing later than usual

Yes–Breaking up working day

Yes - Working longer periods on some days and shorter periods on other days

Yes–Other, please provide details:

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7. How many of your employees that are covered by the Clerks Award and who have been working from home since 1 July 2020 have changed their working hours?

All

Most

Some

None

Don't know

8. Thinking about the employees covered by the Clerks Award who are working different times, why are the different working arrangements in place? Tick all that apply.

Because of the employee's family/caring commitments

Because the employee wishes to attend to personal matters during their usual working hours

Because of the requirements of the work (eg. client availability, manager availability, colleague availability or other work factors)

Because the employer has asked the employee to work these different hours

To accommodate an employee's secondary employment

Other

Not sure / cannot say

9. Where employees covered by the Clerks Award do work from home, who determines when breaks are taken?

The employee chooses when they have a break

The employer directs the times that breaks may be taken

Both

Other_____

10. Have any additional payments or support been provided by the business to employees covered by the Clerks Award who have been working from home since COVID-19 restrictions commenced (i.e. since March 2020)? If yes, please tick all that apply and provide further details below:

Existing laptop, computer or other equipment has been transferred to the home (temporarily or permanently)

New laptop, computer or other equipment

Allowance for purchasing office equipment

Allowance to cover home internet and electricity costs

Mental health support

Additional training

Telephone

Other, please provide details:

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In which state or territory is your business located (tick all that apply)?

Australian Capital Territory

New South Wales

Northern Territory

Queensland

South Australia

Tasmania

Victoria

Western Australia

Flexible working arrangements

The standard spread of ordinary hours under the Clerks Award is between:

- 7.00 am and 7.00 pm on Monday to Friday; and
- 7.00 am and 12.30 pm on Saturday.

Normally, an employee who works outside of this spread of hours would be entitled to paid overtime.

The Clerks Award Flexibility Schedule extends the spread of ordinary hours of work. It allows an employee who is working from home to request a change in the spread of ordinary hours of work so that ordinary hours can be worked between:

- 6.00 am and 10.00 pm, Monday to Friday; and
- 7.00 am and 12.30 pm on Saturday.

11. Of your employees who are covered by the Clerks Award and have been working from home since 1 July 2020, how many are regularly starting before 7 am on weekdays? (Regularly means at least once a week).

12. Of your employees who are covered by the Clerks Award and have been working from home since 1 July 2020, how many are regularly working until after 7pm on weekdays:

And of those, how many are regularly working until:

a. 11pm

b. 10pm:

b. 9 pm:

c. 8 pm:

d. Another time (please specify)

Future working from home arrangements

14. In the future, do you intend on allowing your employees covered by the Clerks Award to work from home? ~~Have you refused requests by employees to work from home during the past 12 months?~~

Yes

No

15. Are there any impediments for your business with allowing employees covered by the Clerks Award to work from home? If yes, please tick all that apply and provide further details below:

Work cannot be completed from home

Concerns about quality of work (eg. client experience, accuracy, availability of resources at home)

Work cannot be supervised to the same extent as in the workplace

Concerns about loss of productivity

Security/privacy concerns (including IT)

WHS concerns

Concerns about 'flow on effect' (eg. other employees will also seek to work from home).

Other, please provide details:

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16. If an employee covered by the Clerks Award works from home, are there circumstances when you will still require the employee to return to the workplace on particular days/weeks? Tick as many as apply

Never

Not likely, this is not commonly required

Yes, for particular client meetings

Yes, for particular work activities

Yes, for team meetings/gatherings

Yes, to ensure adequate supervision

Yes, to maintain regular contact with the workplace, supervisor, peers or clients.

Other