

## IN THE FAIR WORK COMMISSION

AM2020/95

### 4 YEARLY REVIEW OF MODERN AWARDS

#### CLERKS - PRIVATE SECTOR AWARD 2020

#### FURTHER SUBMISSIONS OF ACCI REGARDING PROPOSED SURVEY OF EMPLOYERS OF CLERICAL AND ADMINISTRATIVE EMPLOYEES

##### 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**), which was the subject of submissions filed by ACCI on 26 October 2020 (**Initial ACCI Submissions**) and a conference before the President of the Commission on 27 October 2020 (**the Conference**).

1.3 These submissions supplement the Initial ACCI Submissions and the oral submissions made by ACCI's representatives at the conference on 27 October 2020.

##### 2. QUESTIONS REGARDING WORK PERFORMED BEFORE 7AM AND AFTER 7PM

2.1 During the Conference, ACCI expressed reservations about the use of the term "*regularly*" in the two questions numbered "13" in the most recent version of the Survey circulated by the Commission on 27 October 2020.

2.2 Specifically, by asking employers about how many employees are "*regularly*" working outside of the Award's 7am - 7pm span of ordinary hours, ACCI is concerned that the Survey will elicit responses that do not accurately indicate the prevalence of work being conducted outside the Award's span of ordinary hours.

2.3 This is because, in some workplaces, work outside the span of hours might occur on a relatively common basis, however, work at such times might be performed by a variety of different employees on different occasions. This means that, whilst work outside the span might be a common occurrence on a collective basis, the employer might not necessarily have individual employees who are regularly working outside the span individually.

2.4 In order to better identify the prevalence of work being performed outside the span of ordinary hours, ACCI and Ai Group have proposed a new joint set of questions to replace the current questions numbered “12” and “13”.

### **3. QUESTION PERTAINING TO THE COLLECTION OF EMPLOYER POLICIES REGARDING WORKING FROM HOME**

3.1 In the ACCI Initial Submissions and during the Conference, ACCI expressed reservations about the Survey’s request for employers to provide working from home policies to the Commission.

3.2 The basis for these reservations was three-fold:

- (a) Firstly, ACCI was concerned the identity of members might be able to be discerned from the documents sent to the Commission. This concern appears to have been addressed by comments made by the President during the Conference.
- (b) Secondly, ACCI is concerned that the request to provide a working from home policy might deter employers from completing the Survey, thereby adversely affecting response rates. Some employers will inevitably be reluctant to provide internal policies to an external body - regardless of the steps the Commission may take to protect the anonymity of the policies supplied.

- (c) Thirdly, ACCI is concerned that the probative value of the working from home policies collected will be extremely minimal. This is because the working from home policies will either have been drafted:
- (i) before the onset of the COVID-19 pandemic and accordingly will not necessarily reflect present working from home practices or arrangements (it is trite to note that employer and employee practices pertaining to working from home have changed markedly since the onset of the pandemic); or
  - (ii) after the onset of the COVID-19 pandemic and accordingly might demonstrate current approaches to working from home being adopted by employers on a temporary basis, but which might not be intended to be applied on an ongoing basis.

The reality is that practices pertaining to working from home are presently in a state of flux. Written policy documents tend to be slow in keeping up with rapidly moving developments and tend to only point to a state of affairs at a static point in time.

ACCI accordingly has very real concerns that the policy documents presently on file at various employers that might complete the Survey will not accurately represent the actual state of affairs or intended future state of affairs with respect to working from home arrangements and the policies' content accordingly may have the propensity to mislead.

- 3.3 On the basis of the second and third concerns identified above, ACCI's preference is that the request for working from home policies to be provided to the Commission is not included in the Survey.
- 3.4 If such a request is included (notwithstanding these submissions), ACCI's preference is that the Survey clearly indicates that the provision of the policy is optional and it is

clear to employers that they are able to continue to complete the survey even if the policy is not provided. This should help to ensure response rates are not adversely affected by the request to provide internal policies to the Commission.

- 3.5 The suggestion that employers separately email their policies to a particular email address supplied by the Commission might assist in indicating to employers that the completion of the Survey is not conditional on employers supplying their working from home policies to the Commission.

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

**29 October 2020**