

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

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Modern Award Review Stream:

- Arts and Culture:
- Job Security:
- Work and Care:
- Usability of awards:

**FEEDBACK ON SURVEY
WORK AND CARE
MODERN AWARDS REVIEW 2023-24
AM2023/21**

23 February 2024

We refer to the Modern Awards Review 2023-24 - AM2023/21 - Work and Care matter, Statement [2024] FWC 476 (**Statement**) and the mention held 21 February 2024 (**Mention**).

Paragraph [2] of the Statement states:

The parties were also provided information concerning the proposed employer survey foreshadowed in the President's statement on 24 November 2023, and invited to put forward any topics or questions for inclusion in the survey. Any interested person is able to put forward any such suggestions by email to awards@fwc.gov.au by 4:00PM AEDT on Friday, 23 February 2024. Queries raised by parties concerning the survey will be provided to the relevant Commission staff and considered.

On behalf of Business NSW and ABI, we provide the following brief feedback:

1 – The ACTU's suggestion to advise survey respondents of the details of the Minister's Request should not be adopted

During the Mention, the ACTU suggested that survey participants should be advised that the Minister's Request to the Fair Work Commission dated 12 September 2023 (**Ministerial Request**) had indicated that outcomes of the Modern Awards Review 2023-24 "should not result in any reduction in worker entitlements".

This suggestion is opposed by Business NSW and ABI.

While Business NSW and ABI have limited detail as to the form or content of the proposed employer survey, past experience suggests that the survey will seek to obtain data or detail from employers about their current experience including asking questions about existing arrangements and/or existing challenges.

Advising employers of the content of the Ministerial Request regarding the requested scope of the review is in our view irrelevant to the survey exercise and likely to be counterproductive to the collection of any meaningful feedback.

If the survey of employers is to have any utility, employers should feel able to give unconstrained responses regarding their current experience.

The second issue with this suggestion has already been canvassed in our Usability of Awards submission dated 22 December 2023 from [5.22].

The qualification that worker entitlements must not be reduced is not a feature of the *Fair Work Act 2009* (Cth) or the Commission's powers under it to vary modern awards.

Indeed, by the operation of s138 of the FW Act, modern awards *must* be varied if the Commission forms the view that the variation is necessary to meet the modern awards objective.

2- A central element of the Survey should be the particular experience of Small Business

Noting that the parties have been advised that the survey will be qualitative rather than quantitative, Business NSW and ABI encourage the Commission to have regard to the significant difference between small and large businesses in relation to general topic of workplace flexibility.

Aside from any other consideration, the *capacity* of smaller businesses to offer flexibilities and accommodations to employees is often very different from that of bigger businesses.

The Commission should seek to ensure that any survey conducted in this matter is designed to identify the specific challenges faced by small to medium business in this area and to disaggregate the experience of large employers from that of other employers.

Filed on behalf of Business NSW and Australian Business Industrial by Australian Business Lawyers & Advisors:

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23 February 2024