

# ACCI Reply Submission

## Modern Awards Review 2023-24

Making Awards Easier To Use

19 February 2024



**Working for business.**

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## Introduction

- 1.1. Having had the opportunity to review submissions made by others in the ‘making awards easier to use’ stream of the Modern Awards Review 2023-24 (**Review**), the Australian Chamber of Commerce and Industry (**ACCI**) submits only a brief Reply.
- 1.2. In this Reply ACCI wishes to make submissions regarding:
  - i. the scope of the Review; and
  - ii. the impact of the recent Fair Work Commission (**Commission**) decision in the *Modern award superannuation clause review (AM2022/29)*<sup>1</sup> on ACCI’s proposed changes to superannuation clauses.
- 1.3. As a peak organisation ACCI has advanced proposals that, except for the *Clerks – Private Sector Award 2020*, are common to a number of the seven awards identified by the Commission as part of this stream of the Review (the **Common Awards**).<sup>2</sup> It intends to limit its participation at the listed Conferences to those matters which impact multiple modern awards, rather than industry specific matters.
- 1.4. That said, as a general observation those industry specific proposals put by others are, in ACCI’s view, generally consistent with the stated goals of this stream of the Review and should be given serious consideration by the Commission.<sup>3</sup>

## Scope

- 1.5. ACCI supports submissions put forward by others which address the constraints placed on employer representatives during this Review by the Minister for Employment and Workplace Relations (**Minister**), being that the Review “outcomes should not result in any reduction in worker entitlements”.<sup>4</sup>
- 1.6. While ACCI repeats its submission that it does not seek to reduce worker entitlements in advancing any of its proposals<sup>5</sup> (and this is evident by the modest nature of the proposals put forward), it respectfully agrees with those parties that argue that the Commission, as an independent body, should not be constrained by broader Government policy considerations which do not align with the statutory requirements. This being a consideration of what is necessary to ensure that modern awards constitute a fair and relevant safety net of terms and conditions, as contemplated by the modern awards objective (set out at section 134 of the *Fair Work Act 2009 (Cth)* (**FW Act**)).

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<sup>1</sup> *Variation on the Commission’s own motion – Modern award superannuation clause review (AM2022/29)* [2023] FWCFB 264

<sup>2</sup> Justice Hatcher, Fair Work Commission, *President’s Statement on Modern Awards Review 2023-24* (15 September 2023) [10(1)].

<sup>3</sup> See Minister for Employment and Workplace Relations, Letter to the Hon Justice Adam Hatcher (12 September 2023)

<sup>4</sup> *Ibid.*, 1

<sup>5</sup> ACCI Submission – Making Awards Easier To Use (22 December 2023) (**Initial Submission**), [1.6] – [1.11]

- 1.7. While ACCI submits that its proposals are consistent with this non-statutory test, in that, if implemented, they would “not result in any reduction in worker entitlements”, ACCI remains open to supporting proposals advanced by others which may be more ambitious so long as they satisfy the modern awards objective.
- 1.8. That said, in the interests of limiting the scope of this Review to ensure positive outcomes are achievable, it may be prudent to prioritise, where possible, lessening those aspects of modern awards that are intended to be *informative* instead of creating a safety net of terms and conditions, unless they are necessary for the operation of the award provisions. This approach has been adopted by most employer groups advancing proposals in this stream of the Review.

## Superannuation Clauses

- 1.9. ACCI has submitted that the superannuation clauses in all seven of the Common Awards should be replaced with a new clause which is set out [2.1] of its Initial Submission. While ACCI maintains its position that the proposed change is consistent with the modern awards objective, it wishes to withdraw this submission in light of AM2022/29 and, even then, only in the interests of reducing the scope of matters being considered.
- 1.10. AM2022/29’s scope was limited to a consideration of whether a variation to modern award superannuation clauses is necessary to reflect current superannuation requirements<sup>6</sup>. Accordingly, parties can have regard to a broader range of matters in this Review. ACCI further submits that the proposal is not inconsistent with the decision in AM2022/29, nor is it inconsistent with the new superannuation laws.
- 1.11. The basis of ACCI’s withdrawal is the Full Bench’s comments at [60] that the “minimalist approach of the Ai Group and the ACCI may render their proposed clauses difficult to understand and apply because of the lack of any explanation of the broader context”. While ACCI respectfully disagrees with this assessment, it’s likely that the Commission will make similar findings in its report for this Review.
- 1.12. Rather than re-prosecuting this submission so soon after the Full Bench’s decision, ACCI would prefer to focus on advancing other necessary proposals.

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<sup>6</sup> Background Document 1 – Modern Award Superannuation Clauses and Changes to Superannuation Laws, 28 September 2022; Background Document 2 – All Modern Award Superannuation Clauses, 28 September 2022, Background Document 3 – Award Superannuation Clauses by Category, 28 September 2022.



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