



STATEMENT

Fair Work Act 2009

s.157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective

Clerks—Private Sector Award 2020

(AM2020/98)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 26 NOVEMBER 2020

Clerks—Private Sector Award 2020 – status update – major cases page – research to be published.

[1] On 28 March 2020 the Commission issued a decision¹ (the *March 2020 Decision*) granting a joint application filed by the Australian Industry Group (Ai Group) and the Australian Chamber of Commerce and Industry (ACCI) and supported by the Australian Council of Trade Unions (ACTU) and the Australian Services Union (ASU), to insert a new schedule, ‘Schedule I-Award flexibility during the COVID-19 pandemic’, into the *Clerks – Private Sector Award 2020* (the Clerks Award). The new schedule came into operation on 28 March 2020 and was to cease to operate on 30 June 2020, unless extended.

[2] Since the *March 2020 Decision* the Commission has granted three applications to extend the operation of Schedule I.² The Schedule is due to cease operation on 29 March 2021.

[3] The purpose of this statement is to update interested parties on recent developments relating to the proceedings dealing with the variation of the Clerks Award in respect of working from home arrangements.

[4] On 14 October 2020 the Full Bench constituted to deal with this matter issued a [statement](#)³ in which interested parties were invited to comment on the draft survey attached to the statement. The survey instrument was finalised in a [decision](#) dated 20 November 2020. A final version of the survey instrument and covering email is attached to this statement.

¹ [2020] FWCFB 1690.

² [2020] FWCFB 1690, [2020] FWCFB 5199 and [2020] FWCFB 6078

³ [2020] FWCFB 5484.

[5] The survey is intended to address the ‘evidentiary gap’ regarding the incidence of working from home arrangements amongst employees covered by the Clerks Award and the extent to which the flexibility provided by Schedule I has been utilised.⁴ The survey also asks respondents questions in relation to their future plans for working from home arrangements. This may assist in the consideration of the terms of any future variation to the Clerks Award.

[6] The survey will be administered through an online platform (Alchemer) and will be sent out by ACCI and the Ai Group to the relevant members of those organisations. The present intention is that the survey will remain open for 4 weeks. A report will be published on the Commission’s website after the survey closes.

Research

[7] As set out in a Statement of 10 November 2020⁵, in order to provide further assistance to parties, academics have been engaged to undertake research to inform the Commission of issues relevant to the determination of an award term to facilitate working from home.⁶

[8] Academics from Swinburne University have prepared a report which examines key trends in data about working from home. A copy of this [report](#) will be published on the Commission’s website at the same time as this Statement.

[9] A report on employee preferences for flexibility undertaken by the University of Sydney will be published by the end of November.

[10] A [research reference list](#) prepared by staff of the Commission was attached to the 20 November decision. Parties are invited to submit additional materials for inclusion to the list. Relevant materials should be sent to amod@fwc.gov.au.

[11] Commission staff will also continue to update information notes on the [Coronavirus \(COVID-19\) updates and advice](#) webpage.

New major cases page

[12] The Commission has established a dedicated [Major Cases webpage](#) for this matter.

⁴ See [2020] FWCFB 5199 at [58] – [62] and [95] – [100].

⁵ [2020] FWCFB 5999

⁶ [2020] FWCFB 5999 at [19].

[13] The Commission's award subscription service will be used to notify interested parties of updates during this matter such as deadlines for the filing of submissions and evidence, notices of listing and when any decisions or statements are issued. A dedicated subscription service called 'Clerks-Private Sector Award–Working from home case' will be established and operative from 26 November 2020. Interested parties are encouraged to subscribe to receive notifications on the [subscription services page](#) on our website. Any questions about the subscription service can be sent to amod@fwc.gov.au.

PRESIDENT

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Attachment – final version of the survey

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. The final part of the survey includes questions about your plans for working from home arrangements in the future.

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 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

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 businesses with employees covered by the Clerks Award have adapted to working from home 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 surveyresearch@fwc.gov.au

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

Note: Questions 3 to 6 ask you to identify the number of employees employed by your business, covered by the Clerks Award and who have been working from home since 1 July 2020. If you can, please provide the exact number of employees in response to each question, but if you cannot provide an exact number, please estimate the number of employees to the best of your knowledge.

3. 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

Note: The following questions relate to your employees who are covered by the Clerks Award. Do not include employees covered by an enterprise agreement.

5. How many of your Clerks Award employees have been working from home 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).

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6 How many of these employees are:

Gender	Number of employees
Female	
Male	
Other (Individuals who identify as non-binary, gender diverse, or with descriptors other than female or male.)	

7. Please indicate whether any of your Clerks Award employees, who have been working from home since 1 July 2020, have changed their times of work in any of the following ways during this period? Tick all that apply

- Starting earlier than usual
- Finishing later than usual
- Breaking up their working day
- Working longer periods on some days and shorter periods on other days
- Don't know

8. How many Clerks Award employees have changed their times of work in the period since 1 July 2020?

- All
- Most
- Some
- None
- Don't know

9. Who requested the changes in times of work?

- The employer
- The employees
- Both the employer and employees have requested changes
- Don't know / can't say

10. Thinking about the Clerks Award employees who have changed their times of work, 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 (other than family / caring or study commitments commitments)

To accommodate an employee's secondary employment

To accommodate an employee's study commitments

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

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

Not sure / cannot say

Other

11. Where Clerks Award employees do work from home, who determines when breaks from work are taken?

The employee chooses when they have a break

The employer directs the times that breaks may be taken

Both

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

Existing laptop, computer or other equipment has been transferred from the employee's usual place of work to the home (temporarily or permanently)

New laptop, computer or other equipment

Allowance or reimbursement for purchasing office equipment

Allowance or reimbursement to cover home internet and electricity costs

Mental health support

Additional training

Provision of a telephone or payment of a telephone allowance or reimbursement

Other, please provide details:

No additional payments or support have been provided

13. Does your business have a policy about working from home?

Yes

No

If yes please provide a copy of the policy to the Commission, by email to surveyresearch@fwc.gov.au. The policy document will only be used by the Commission for analysis about the types of things covered in a working from home policy, it will be de-identified in any published reports and the name of your business will not be disclosed.

14. 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 (for employees other than shiftworkers) 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 (other than a shiftworker) 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.

Note 1: Questions 16 to 18 ask you to identify the number of employees working from home and their patterns of working hours, if you can, please provide an exact number of employees in response to each question; but if you cannot provide an exact number, please estimate the number of employees to the best of your knowledge.

Note 2: The following questions relate to your employees who are covered by the Clerks Award only. Do not include employees covered by an enterprise agreement.

15. Of your Clerks Award employees (other than shiftworkers) who have been working from home since 1 July 2020, how many have changed their times of work so that they have undertaken work between 6am and 7am on weekdays during this period, **either**:

a) on a regular basis

or

b) from time to time

16. Of your Clerks Award employees (other than shiftworkers) who have been working from home since 1 July 2020, how many have changed their times of work so that they have undertaken work between 7pm and 10pm on weekdays during this period, **either**:

a) on a regular basis

or

b) from time to time

17. And of those who have changed their work hours so as to undertake work between 7pm and 10pm, how many have changed their times of work so that they have either regularly or from time to time worked any of their hours between the following times:

a. 9pm and 10pm:

b. 8pm and 9 pm:

c. 7pm and 8 pm:

d. Another time (please specify)

Future working from home arrangements

18. In the future, assuming you were not required by any public health order or other legal obligation to permit an employee to work from home, do you intend to allow your employees covered by the Clerks Award to work from home at least some of the time?

Yes

No

19. Are there any impediments to your business allowing Clerks Award employees to work from home? Please tick all that apply and provide further details below:

Work cannot be completed from home

Reductions in the quality of the employee's work performance

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

Loss of productivity

Security/privacy concerns (including IT)

WHS concerns

Costs of facilitating the arrangement

Other, please provide details:

No, there are no impediments

20. If you were to permit some of your Clerks Award employees to generally or sometimes work from home, are there circumstances when you may still require some or all of these employees to undertake some work at your workplace?

- Yes
- Potentially
- No

If the employer answers “yes” or “potentially” move to question 22

21. Why would you potentially require employees to undertake some work at the workplace? Select all that apply.

- because some work activities cannot be performed remotely
- to participate in team meetings/gatherings
- to ensure adequate supervision of the employee
- to maintain regular contact with the workplace, supervisor, peers or clients
- because of concerns about the quality of work performed remotely
- Other, please provide details:

Dear X,

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.

You have been chosen to take part in this survey as a member of the Australian Chamber of Commerce and Industry/the Australian Industry Group (select relevant employer org). Help provide your insights and feedback by completing this survey before [DATE].

What will the survey ask?

The survey will take less than 10 minutes to complete and asks about three main topics:

1. **Your business and your employees.** For example, where your business is, how many employees you have and how many employees are covered by the Clerks Award.
2. **Any working from home arrangements accessed by your employees.** These include questions about any changes to how your employees are working their hours while they're at home, and what extra help, if any, you've provided.
3. **Your plans for working from home arrangements in the future.** These include questions about whether you'll allow your employees to work from home in the future and if so in what circumstances you'll need employees to come into the workplace.

What will your responses be used for?

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.

The survey is conducted by the Commission and your responses are anonymous.

[Click here to complete the survey.](#)

If you have any questions or concerns about your privacy or how the data will be used, please contact surveyresearch@fwc.gov.au.