



# DECISION

*Fair Work Act 2009*

s.158 - Application to vary or revoke a modern award

## **The Australian Industry Group and Australian Chamber of Commerce and Industry**

(AM2020/105)

Clerical industry

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
DEPUTY PRESIDENT MILLHOUSE  
COMMISSIONER BISSETT  
COMMISSIONER BOOTH

MELBOURNE, 22 DECEMBER 2020

*Clerks—Private Sector Award 2020—joint application to vary Schedule I-Award flexibility during the COVID-19 pandemic – provisional view confirmed – award varied.*

[1] On 28 March 2020 the Commission issued a decision<sup>1</sup> (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.<sup>2</sup> The Schedule is due to cease operation on 29 March 2021.

[3] On 17 December 2020, Ai Group and ACCI filed a joint application to vary Schedule I (the Joint Application). The Joint Application is not opposed by the ACTU or the ASU. The Joint Application is the product of the discussions between the interested parties.

[4] The Joint Application seeks to extend the operation of Schedule I-Award flexibility during the COVID-19 pandemic until 30 June 2021. It also seeks to delete the current clause I.2.1 and replace it with a new provision dealing with remote working arrangements. The proposed clause defines remote work as follows:

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<sup>1</sup> [2020] FWCFB 1690

<sup>2</sup> [2020] FWCFB 3443, [2020] FWCFB 5199, [2020] FWCFB 6078

‘For the purposes of clause I.2.1, Remote Work means work undertaken by an employee from their home or any other location of their choosing that is not the premises of their employer.’

[5] The proposed clause retains the same extended span of hours for days workers undertaking remote work as the current Schedule I, that is from 6.00 am to 10.00 pm, Monday to Friday, and from 7.00 am to 12.30 pm on Saturday. It also provides for the following additional flexibilities:

- employees may elect to work their hours in a non-continuous manner while undertaking remote work;
- part-time employees may select their own starting and finishing times when undertaking remote work, with agreement from their employer;
- flexibility in relation to the taking of meal or rest breaks by employees undertaking remote work, subject to agreement with the employer.

[6] On 18 December 2020, we issued a [Statement](#) expressing the *provisional* view that Schedule I should be varied and extended until 30 June 2021 in accordance with the proposal advanced by Ai Group and ACCI. A draft determination was attached to the Statement.

[7] In the Statement we said that if no submissions were received opposing the *provisional* view by 4 pm on Tuesday 22 December 2020, we would vary the Clerks Award in the same terms as the draft determination. No submissions were received and so we confirm our *provisional* view.

[8] We are satisfied that the variation proposed is necessary to achieve the modern awards objective and in so deciding we have taken into account the considerations in s.134(1)(a) to (h), insofar as they are relevant.

[9] A variation determination will be issued with this decision.

PRESIDENT

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