



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)

Clerical industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 29 APRIL 2021

Clerks-Private Sector Award 2020—work from home case—parties request that the case be discontinued—provisional view expressed.

[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) 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 application was supported by the Australian Council of Trade Unions (ACTU) and the Australian Services Union (ASU). 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 four applications to extend the operation of Schedule I.² The Schedule is due to cease operation on 30 June 2021.

[3] The Schedule provides for flexibilities in relation to employees working from home and includes:

- a definition of remote work
- an extended span of hours for employees working remotely
- a provision allowing employees to elect to work their hours in a non-continuous manner while undertaking remote work
- a provision allowing part-time employees to select their own starting and finishing times when undertaking remote work, with agreement from their employer, and

¹ [\[2020\] FWCFB 1690](#)

² [\[2020\] FWCFB 3443](#), [\[2020\] FWCFB 5199](#), [\[2020\] FWCFB 6078](#), [\[2020\] FWCFB 6985](#)

- flexibility in relation to the taking of meal or rest breaks by employees undertaking remote work, subject to agreement with the employer.

[4] The Schedule also provides flexibilities in relation to a temporary reduction in ordinary hours of work and the taking of annual leave. The Schedule includes the following safeguards:

- in effect, disputes about the operation of Schedule I can be dealt with by the Commission, by arbitration, and
- any direction or request given by an employer under Schedule I must be given in writing and does not apply to the employee if the direction is unreasonable.

[5] In a decision on 6 October 2020³, the Full Bench said:

‘...the terms of Schedule I reflect the extraordinary circumstances arising from the restrictions imposed to contain the COVID-19 virus. The restrictions are now easing but the direct economic and social impacts of the pandemic will be felt for some time to come. It also seems likely that there will be a continuing need for flexible work arrangements to assist employers and employees in adapting to the changed conditions and to support the recovery. The facilitation of agreed working from home arrangements looms large in this context...

These circumstances suggest that there is a need to consider whether it is necessary to vary the Clerks Award to provide more enduring means of facilitating agreed working from home arrangements. The extension of Schedule I provides the parties with an opportunity to consider whether a more enduring solution is necessary and if so, the form of that solution...

We direct the ASU, ACTU, Ai Group and ACCI to confer in respect of the variations to the Clerks Award (if any) which are necessary to facilitate agreed working from home arrangements. In this regard we refer the parties to the model Flexibility Schedule attached to the [President’s Statement](#) of 31 August 2020 as a starting point for those discussions. We would also refer the parties to the updated Information Note on Working from Home published on 1 October 2020.

The Commission will convene a conference in the week commencing 9 November 2020 to receive a report on the discussions....’

[6] Conferences were convened on 18 November and 17 December 2020. At the conference on 17 December 2020, the parties requested a conference in mid-February 2021 to continue discussions in relation to the form of any future award term dealing with working from home. Further conferences were listed in March and April 2021, but these were cancelled at the request of the parties.

³ [\[2020\] FWCFB 5199](#)

[7] On 11 April 2021, the ACTU wrote to the Commission on behalf of the ASU, ACCI and Ai Group.⁴ The parties jointly propose that the current proceedings should be discontinued.

[8] The parties note that they intend to continue to monitor relevant developments with a view to potentially engaging in further discussions and/or seeking the further assistances of the Commission through a relevant application, if a further change to the Clerks Award is necessary.

[9] Taking into account the views of the parties, it is our *provisional* view is that the matter should be discontinued. A consequence of our *provisional* view that Schedule I to the Clerks Award will cease operation on 30 June 2021.

Next Steps

[10] Any interested party opposing our *provisional* view or who seeks to extend the operation of Schedule I after 30 June 2021, must file a submission setting out their views by no later than **4pm on Friday 14 May 2021**. Submissions are to be sent to amod@fwc.gov.au.

[11] If no submissions are filed opposing our *provisional* view, Schedule I to the Clerks Award will not be extended and will therefore cease operation on 30 June 2021. The Clerks-Private Sector Award 2020–Work from home case (AM2020/98) will also be discontinued.

[12] If any submissions are filed opposing our *provisional* views then a hearing will take place at **9:30am (AEST) on Friday 21 May 2021**, by telephone. Parties wishing to appear at the hearing are to provide the name, direct number and organisation by **4:00pm (AEST) on Thursday 20 May 2021** to chambers.ross.j@fwc.gov.au. If no submissions are filed opposing our *provisional* view then the hearing will not be necessary and will be vacated.

PRESIDENT

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⁴ [ACTU correspondence](#), 11 April 2021