

Australian Industry Group

Variation on Commission's own
initiative — Clerks — Private Sector
Award 2020

Submission
AM2024/34

11 March 2025

Ai
GROUP

FAIR WORK COMMISSION

Matter No.: AM2024/34

Re Application by: Commission's own initiative.

Ai Group submissions – survey questions

1. These submissions are made in accordance with the Commission's statement on 3 March 2025 regarding the draft survey questions in matter AM2024/34.¹
2. Ai Group acknowledges the importance of the survey and the potential contribution it could make to the Commission's consideration of the issues which are the subject of the application.
3. Given the limited timeframe available, Ai Group has reviewed the draft questions as thoroughly as possible and has endeavoured to provide feedback that is practical and constructive. It is likely more considered feedback would have been provided had the window for submissions not been so exceedingly short. In this respect, we observe that during the conference on 25 November 2024, there was uniform support for interested parties to be provided a meaningful opportunity to consider the draft questions. We also note that it took three months from the last conference for the draft survey to be prepared by Swinburne University and subsequently published by the Commission. Given this context, we respectfully suggest that it would be appropriate for interested parties to have a further window to provide constructive input into the content of the survey. This need not cause any disproportionate delay.
4. Ai Group submits that there are important aspects of the survey that require substantial reconsideration. The development of a survey such as that which is proposed is a complex undertaking. We have identified several concerns with the proposed questions, including the form and structure.
5. Aside from perceived deficiencies in the questions, we believe there are additional questions that should be asked to elicit relevant information. We note

¹ [2025] FWCFB 47.

that other parties have also suggested additional questions as well as changes to those that have been drafted already.

6. Importantly, we also observe that it is unclear how the participants in the survey will be selected. A better understanding of who will be selected and asked to complete the survey would assist in considering the questionnaire and providing feedback.
7. In the context of other major proceedings, the Commission has facilitated engagement with and between interested parties over the content and conduct of Commission facilitated surveys. There may be value in a similar process being undertaken once submissions have been received, for example by way of a further conference before the Commission. Alternatively, it may be appropriate to afford parties a window to respond to any submissions advanced by parties and to comment on any amended survey. We suggest that this should occur after a further conference in order to assess whether agreed positions can be reached between the parties and Commission through discussion.
8. Given these considerations, we suggest that the matter be listed for a brief conference to determine the next steps in the conduct of the matter once parties have been given a reasonable period to consider any written submissions filed.
9. The balance of Ai Group's feedback is structured as follows:
 - A. First, we provide our overall impression of the questionnaire.
 - B. Second, we provide feedback on the employee survey questions.
 - C. Third, we provide feedback on the employer survey questions.

Ai Group's overall impression

10. Overall, Ai Group's impression of the questionnaire is that it is skewed to elicit information that would be relevant to a proposal to insert a right to request to work from home for employees covered by the instrument.
11. One of the issues to be determined is whether a 'working from home' term should be included that confers a right for employees to request working from home

arrangements. Ai Group anticipates that its position, and likely other employer bodies' position, will be that a term is unnecessary and is adequately caught by clause 5 of the Clerks Award as well as s.65 of the Act. By contrast, it apprehends the unions' position to be that such a term is necessary.

12. To consider whether such a term is necessary, in the sense required under the Act, it is appropriate to understand:

- A. The extent to which employees are working from home already and what led to that.
- B. The extent to which patterns of work differ for employees working from home from those working from employer premises.
- C. The aspects of the Clerks Award which present barriers to working from home.

13. The Clerks Award contains a relatively strict apparatus regulating hours of work. Despite this, there are no questions that have been directed to understanding:

- A. How employees' working hours differ when they WFH rather than from employer premises;
- B. Whether, when working from home, their hours are consistent with the ordinary hours provisions of the Clerks Award;
- C. The extent their breaks are consistent with those specified in the Clerks Award;
- D. The extent to which hours are worked continuously, as required by the Clerks Award;
- E. Whether employees would prefer more flexible hours when they work from home (or indeed whether they do already work more flexibly, notwithstanding it is potentially in breach of the Clerks Award);
- F. The extent to which employees who work from home record precise start and finishing times, as well as paid and unpaid breaks; and

G. The extent to which the imposition of recording precise working hours would constitute a burden on employees and employers (or even be possible in all circumstances).

14. Given the structure of the Clerks Award, this information would clearly be helpful to understand whether its terms present barriers to working from home. This information would also be helpful in assessing whether a provision granting employees the right to request to work from home is necessary.

Feedback regarding employee survey

Screening Question 1

15. The screening questions risk eliminating employees from completing the survey, notwithstanding they may be covered by the Clerks Award. The terms 'Manager' and 'Senior Administrator' do not correspond to those titles included in parentheses and are also unlikely to accurately reflect award coverage.
16. Instead of 9 examples of descriptions, screening question simply corresponds to the coverage clause of the Clerks Award, e.g.:

In your job, are you wholly or principally engaged in clerical work?

(The list of examples of clerical and administrative work could be drawn from the employer survey rather than the definition of 'clerical work')

17. Although the list of duties specified in the current list corresponds to the definition of clerical work in clause 2 of the Clerks Award, the definition is not an exhaustive list and its inclusion in the survey risks screening out eligible employees.

Screening Question 2

18. Question 2 also risks screening employees out who are covered by the Clerks Award. The key responsibilities are not an exhaustive list of the typical duties in the Clerks Award. Ai Group suggests this question is removed, or otherwise an exhaustive list of clerical and administrative work be included. Given the complexity involved, removing the question is likely to be the more efficient approach. The risk of excluding relevant information is greater than the risk of

including information about working from home patterns of senior administrative employees who fall outside of the coverage of the Clerks Award.

Screening Question 3

19. Instead of asking if the individual is covered by the Clerks Award, Ai Group recommends the approach is changed to:

Are you aware of any modern award or enterprise agreement that applies to your employment?

20. If the individual is unsure, allow them to proceed with the questionnaire, assuming the primary screening question has been answered in the affirmative. If the individual knows whether they are covered by a modern award or enterprise agreement, ask:

To the best of your knowledge, are you covered by the Clerks-Private Sector Award 2020?

Demographic Questions

21. The following questions are of limited relevance and should be removed:

- A. Marital Status
- B. Highest education level
- C. Household income
- D. Business size/~~revenue~~

WFH Request and arrangements

22. The first three questions should be worded differently and asked later in the survey. Questions 4 to 5 are more appropriate initial questions. Questions 1 to 3 should only be asked of employees who say they have had a request to WFH refused.

Questions 11 and 12

23. Questions 11 and 12 ask whether individuals believe the Clerks Award creates barriers to working from home. However, many (or even most) employees are unlikely to be especially cognisant of the provisions in the Clerks Award and whether they impose such barriers.
24. The current award may be restricting employees from obtaining work-from-home or other flexible arrangements in ways they do not realise.
25. This may occur if employers enforce (or prohibit) certain working arrangements without clearly explaining their reasoning to employees.
26. It is also possible that some employees are working from home pursuant to flexible arrangement despite the arrangement not being permitted under the Clerks Award. This may arise without the employer's knowledge. It may also arise where employers and employees have policies in place that enable working from home that have been developed without particular attention being paid to the terms of modern awards.
27. To this end, we propose the following questions be included:

A. *To what extent do you agree or disagree with the following statements:*

- (i) *When I WFH, I would like to be able to take breaks to attend to personal matters, outside of the meal break or rest breaks contemplated by the Award*
- (ii) *I would like the ability to take time-off during my ordinary hours of work and make these up at a later point in time on that day (which may be before or after your normal starting time)*
- (iii) *When I WFH, I work at times that balance my own needs with that of the business*
- (iv) *When I WFH, I sometimes decide when I will take breaks from working*
- (v) *When I WFH, I only take breaks at specified times that are determined by my employer*

(vi) *My WFH arrangements, including all hours worked as well as breaks taken when I WFH, are comprehensively and accurately recorded in writing*

(if they agree, a prompt should ask the employee what method is used to make these records)

(vii) *I would prefer not to record precise start and finishing times, including breaks.*

(viii) *When I work from home, I perform work before 7am*

(Frequently, regularly, occasionally, sometimes, never)

(ix) *When I work from home, I sometimes work after 7pm*

(Frequently, regularly, occasionally, sometimes, never)

(x) *I WFH on Saturdays*

(Frequently, regularly, occasionally, sometimes, never)

(xi) *I WFH on Sundays*

(Frequently, regularly, occasionally, sometimes, never)

28. Each of the questions (unless otherwise stated) should have (*strongly disagree, disagree, neither agree nor disagree, agree, strongly agree*).

29. A comparable line of questions should be developed for the employer survey.

Employer Survey

Question 1

30. For clarity, Question 1 could be amended to make the criteria described more apparent. For example, it could include a chapeau which states:

To participate in the survey, you must:

- *Be at least 18 years of age; and*

- *A senior leader or owner of a private-sector organisation carrying out commercial activities or business in Australia.*

Question 2

31. The list of examples of clerical and administrative work should include:

- Administering salary and payroll requirements

32. Payroll related duties is typical duty and skill of levels 2, 4 and 5.

Question 9

33. It is probable that some individuals completing the survey are not aware of the extent of award coverage. Notwithstanding this, such individuals are still likely to provide useful information.

34. Before question 9, Ai Group recommends you ask the following question:

Are you aware of any modern awards or enterprise agreements that applies to one or more employees at your organisation?

35. For individuals who are unsure whether the Clerks Award covers them, still ask current questions 9 onwards but direct the question to employees performing clerical work rather than employees covered by the Clerks Award.

Question 10

36. The questions asked in the rows are, with respect, confusing. Instead of those questions, you could ask:

- A. Can work from home without needing to make a formal request
- B. Have submitted a formal request to work from home that has been approved
- C. Have submitted a formal request to work from home that has been declined

Question 12

37. The question asks for an opinion about a legal entitlement. Any of the matters listed there could be grounds for a request to be approved. This question does not elicit any new information. Consider rewording the question as follows:

Have you ever APPROVED a formal working from home request that was submitted based on any of the following grounds:

(list to be included)

Question 13

38. For the same reason in question 12, consider rewording question 12 as follows:

Have you ever DECLINED a formal working from home request that was submitted based on any of the following grounds:

(list to be included)

Question 14

39. The following reason should be included, given anecdotally it is a common reason why employers may not permit clerical and administrative employees to work from home:

There are some tasks that can only be performed in person (e.g. printing, opening and closing premises, attending reception etc.)

Additional questions

40. For the same reason as in relation to the employees' survey, Ai Group recommends the following questions are asked:

A. To what extent do you agree or disagree with the following statements?

(i) The business would generally permit employees who work from home to work flexible hours, as long as business needs are met and it was possible under the award

- (ii) Employees who work from home are required to record their exact working hours, including start and finish times and break periods.*
- (iii) If my business required employees to record their exact start and finish times, including all breaks, I am confident they would do so accurately.*
- (iv) The business is able to reliably confirm the precise hours worked by employees, and any breaks that they take, while working from home.*
- (v) The business would be prepared to permit employees to take breaks during their ordinary hours of work (beyond their meal breaks) and to instead undertake such work at an early or later time provided the business did not need to pay penalty rates for such work.*