



In the Fair Work Commission

Matter No.: AM2020/95

S. 157 Variation of a Modern Award to achieve the Modern Award's objective

Clerk – Private Sector Award 2020

Submission of the Australian Services Union regarding the conduct of the FWC Working from Home Survey

Submitter: Robert Potter, National Secretary

Organisation: Australian Services Union – National Office

Address: Ground Floor 116 Queensberry Street, Carlton South, Victoria, 3053

Phone: 03) 9342 1400

Email: info@asu.asn.au

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1. The ASU writes to make comment on the FWC Draft Survey regarding the Clerks Award and Working From Home as per the FWC Full Bench Statement on the 14th October 2020.
2. The ASU generally supports the Draft Survey concept. However, we shall make some comment on the use of the Survey for future purposes, whether it is sufficient to overcome the 'evidentiary gap' noted by the Full Bench in its 6 October 2020 Decision and make specific suggestions regarding some Survey questions. Also, if the AIG and ACCI agree to distribute the Survey to their members the ASU would like to be assured that this process will be transparent and accountable. And we propose an alternative to the employer associations conducting the Survey (more on this point below).
3. Regarding the Draft Survey the ASU notes that it is very Covid-19 specific. That is to say this Survey is being conducted during the Covid crisis and where the shift to working from home happened very quickly without necessarily involving a planned process. Thus the ASU is reluctant to accept the results of this Survey as justifying future permanent working from home arrangements which will occur in a completely different context.
4. The Draft Survey is also obviously employer focused. It does not tell us much about the employee's view of working from home. The Full Bench in its Decision on the 6 October 2020 says at paragraph 59, "We accept the ASU's submission regarding the absence of direct evidence of the experience of the employees covered by the Clerks Award." It characterizes this as an 'evidentiary gap' in paragraph 95 of its Decision. The ASU submits that conducting a Survey of just employers will not properly fill this evidentiary gap and there is a case to have a parallel survey of employees.
5. The ASU would like to make some specific suggestions regarding the Draft Survey questions. For instance, at Question 6 it would also be useful to know how many employees are full-time, part-time or casuals. This would give us a more complete employee profile.
6. At Question 7, we would suggest an additional question regarding whether the change in the pattern of work was initiated by the employer or the employee. This would help us to gauge who is making the demand to work from home. At Question 9 we would suggest an additional question regarding whether the employer conducted a risk assessment / ergonomic assessment of the employee workspace as required by the OHS Acts and Regulations. This would help us understand the level of protection afforded to employees.
7. If the employer associations agree to distribute the Survey the ASU would like to be assured that Survey best practice will be adopted to eliminate any bias. The ASU simply wants to understand how the employer associations will conduct the Survey. We need the following type of basic questions answered.

For example:

- i. Who will the Survey be sent to? Will it be small business, large business, etc.?
 - ii. How many employers will be sent the Survey? Hundreds? Thousands? Or will a sample of businesses be selected? If this is the case, what is the sample?
 - iii. How will the Survey be distributed? Will it be electronically, hard copy or a combination of both?
 - iv. What preamble or introduction will the employers receive from the employer associations? This is important as it sets out the context for the Survey and the reasons for it. Will the employers be encouraged to fill in the Survey? Will they be informed why they should complete the Survey?
8. The Fair Work Commission has on a number of occasions specified what it sees as the proper conduct of survey evidence. For example, in the Annual Wage Review 2012-2013 Decision at paragraph 441 it said:

*“ We appreciate the additional relevant material that some parties, ACCI in particular, seek to put to us, based on their own collection of data. This material can add detail and depth to our understanding. However, if we are to rely on such material, we need to be confident that it is a reliable representation of the issues at hand. **There are well-understood rules about the conduct of surveys that need to be followed if the results of a survey of a sample of a particular population are to accurately represent the picture that you would get if you obtained the same information from that entire population. These rules include that the sample size or proportion sampled must be large enough. Most important, the sample for the survey must be selected on a random basis. If a membership list is used as the basis for a survey, then it is essential that those that respond are properly representative of the entire membership base (e.g. by firm size, form of ownership, industry sector, geographic location). Where this is not the case, then the responses become more like case studies or anecdotes—accounts of the situation of those who did respond, but not to be taken as representative of the survey population (e.g. the membership) as a whole. Even where the survey is representative of the membership, it needs additional evidence to show that it is representative of, for example, employers more broadly.** A valuable step in assessing the representativeness of the respondents is to check the answers against other data that is known to be reliable, such as those from the ABS, where possible. It is good practice to include in such surveys one or more questions that match those in a relevant ABS or other reliable survey, so that this test may be applied. As an example, the collection of information about the industry of the employer and the numbers of persons employed*

would provide information allowing a comparison with ABS data for employment by industry.”(emphasis added)

9. In the recent Annual Wage Review 2019-20 Decision the Full Bench made similar remarks in paragraph 312. The ASU would like the Survey to be conducted in an explicit manner.
10. Then there are process and chronology type issues to consider. The ASU would like to see a step by step guide on how the survey would be distributed, conducted and retrieved. With each step it would be useful to have a chronological timetable outlining when the Survey will be distributed, how long employers will have to complete it and whom do they return it to and how.
11. The most efficient and effective way the employer associations could reassure the ASU would be to place in a witness statement how they intend to conduct the survey. The witness statement would address the type of basic questions raised above. In short, the ASU needs to know who the participants in the Survey will be, how they will be chosen and how the survey will be produced and presented to the participants. Also, what are the steps in the Survey process and what will the timeline be for conducting those steps.
12. The production of such a witness statement would reassure the ASU that the Survey will be conducted in a clear and straightforward manner.
13. Alternatively, the ASU suggests that the Survey not be conducted by the employer associations but by an independent organization, such as a University. The employer associations simply need to give their email membership list to the University and the University will conduct the Survey under its methodological guidelines.