

From: Ruchi Bhatt <ruchi.bhatt@aigroup.com.au>
Sent: Monday, February 12, 2024 11:12 AM
To: Chambers - O'Neill DP <Chambers.O'Neill.DP@fwc.gov.au>
Cc: Brent Ferguson <Brent.Ferguson@aigroup.com.au>; Jessica Tinsley <Jessica.Tinsley@acci.com.au>; Awards <Awards@fwc.gov.au>
Subject: AM2023/21 Modern Awards Review 2023 - 24 - Work & Care - Ai Group Correspondence

Dear Associate,

We refer to the above matter.

Please find **attached** correspondence from the Australian Industry Group.

Regards,

Ruchi Bhatt
Principal Advocate



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12 February 2024

Deputy President O'Neill
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

By email: chambers.o'neill.dp@fwc.gov.au

Dear Deputy President,

Re. AM2023/21 Modern Awards Review 2023 – 24 – Work & Care – Proposed Process

We refer to the above matter and a statement published by the Fair Work Commission (**Commission**) on 29 January 2024 (**Statement**).¹ At paragraph [11] of the Statement, the Commission invited parties to comment on:

- (a) Their intention to participate in the consultation process outlined in the Statement;
- (b) The conduct of the consultation process; and
- (c) The desirability of any additional consultation dates.

The Australian Industry Group (**Ai Group**) intends to make a significant contribution to the 'Work and Care' stream of the Modern Awards Review 2023 – 24 (**Review**). We write in respect of the aforementioned issues and in relation to the process proposed to be adopted by the Commission in this stream of the Review more generally.

Summary of Issues

In the Statement, the Commission indicated that:

- (a) A discussion paper (**Paper**) has been published by the Commission on **29 January 2024**.
- (b) A survey of employers will be conducted by the Commission, which will 'help inform the Final Report of the Review'. There will be an opportunity to make 'oral submissions to inform the survey' at a directions hearing on **21 February 2024**.
- (c) A literature review, relating to various issues potentially relevant to this aspect of the Review, will be published on **8 March 2024**.
- (d) Parties are required to file submissions in response to the Paper by **12 March 2024**.

¹ *Modern Awards Review 2023-24* [2024] FWC 213.



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- (e) Consultation conferences will be conducted on **21 March, 22 March, 3 April and 4 April 2024**. Interested parties will have an opportunity to make oral submissions about the literature review during these conferences.

We respectfully raise the following concerns in respect of the proposed process outlined above and seek to suggest amendments to it.

First, it will not be feasible to respond to the literature review in the written submissions we are required to file, due to the very limited period of time between the publication of the former and the deadline for the latter (i.e. two working days). We also note that the directions issued by the Commission do not contemplate that those submissions deal with the literature review.

Second, we anticipate that it will likely be impracticable to respond to the literature review orally, during the consultation conferences. In order to properly deal with it, it may be necessary to make detailed written submissions about it and to some extent, the primary sources referred to therein. We are concerned that it will not be feasible to do so effectively or efficiently, during the consultation conferences.

It is also appropriate that parties are given an opportunity to consider the literature review before formulating their respective positions and advancing submissions in response to the Paper and the questions posed therein, given the inherent interrelationship between the topics considered (or, to be considered), in each. The parties' submissions will likely be better informed and of more value to the Commission if they are filed having regard to the literature review.

In addition, we note that the Paper poses some 19 questions, inviting parties to advance proposed variations to awards. Further, the Paper focuses on 25 modern awards, reflecting a broad cross-section of industries and occupations. In the circumstances, it is likely that responses to the Paper will include a large number of proposed variations to awards. In our view, the time allocated to the consultation sessions would be best spent discussing the proposals, for the purposes of understanding the parties' respective views in response and to ascertain the degree of support (if any) for the proposals advanced.

Third, and relating to the proposition advanced immediately above; the timetable does not contemplate the filing of submissions in reply. Having regard to the breadth of issues canvassed in the Paper, there is likely to be merit in granting parties an opportunity to file such submissions, in order to better facilitate the efficient conduct of the consultation conferences and inform the preparation of the Commission's report.



We note that in respect of the ‘*Job Security*’ stream of the Review, the Commission recently amended its timetable, in order to allow for the filing of reply submissions². The stream concerning ‘*Making Awards Easier to Use*’ also contemplates the filing of reply submissions.³

Fourth, the Statement indicates that a survey of employers will be conducted. At this stage, the proposed survey questions are not available and it is not clear when the survey will be conducted. Additionally, the timetable does not contemplate an opportunity to comment on the results of the survey. It appears, however, that the survey will relate to issues that may be squarely relevant to the questions posed in the Paper. Specifically, the objective of the survey is to gather ‘*information about variations to modern award provisions that may assist in offering greater flexibility to employees in respect of balancing work and care*’.⁴

Parties should not be required to file their submissions prior to the publication of the survey results. Clearly, the outcome of the survey may shape the position taken by the parties as to how awards should be varied in the context of the Review. Moreover, the parties’ submissions would be better informed if they take into account the results of the survey.

Proposed Amendments to the Timetable

In light of the various concerns outlined above, we respectfully propose the following alternate timetable for this aspect of the Review:

Literature review published	8 March 2024
Survey results published	By 22 March 2024
Submissions due in relation to the Paper, literature review and survey	Not before 5 April
Submissions in reply	Not less than two weeks after submissions are filed
Consultation conferences	Not less than two weeks after submissions in reply are filed

This proposal is supported by the Australian Chamber of Commerce and Industry.

The suggested timeline takes into account various other major matters that are proceeding concurrently with this aspect of the Review. This includes other streams of the Review, the Annual Wage Review 2023 – 24⁵ and proceedings concerning a new ‘*delegates’ rights term*’⁶. Ai Group is also presently involved in a further seven award variation matters and test cases.

² *Modern Awards Review 2023-24* [2024] FWC 334 at [5].

³ *Modern Awards Review* [2023] FWCFB 179 at [1](4).

⁴ *Modern Awards Review 2023-24* [2024] FWC 213 at [5].

⁵ C2024/1.

⁶ AM2024/6.



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The issue of whether more than four consultation conferences should be scheduled (as currently proposed) and how they should be conducted would be best determined after the parties have filed their material in the matter.

We thank the Commission for giving consideration to the above proposals.

Yours sincerely,

Brent Ferguson
Head of National Workplace Relations Policy

Ruchi Bhatt
Principal Advocate