



DETERMINATION

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

The Australian Industry Group and Australian Chamber of Commerce and Industry

(AM2020/105)

CLERKS—PRIVATE SECTOR AWARD 2020

[MA000002]

Clerical industry

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

MELBOURNE, 22 DECEMBER 2020

Application to vary the Clerks—Private Sector Award 2020 – Schedule I – Award Flexibility During the COVID-19 Pandemic

A. Further to the decision [[2020] FWCFB 6985] issued by the Full Bench on 22 December 2020, the above award is varied as follows:

1. By deleting the words “29 March 2021” appearing in clause I.1.1 and inserting “30 June 2021”.

2. By deleting clause I.1.3 and inserting the following:

I.1.3 An employer who issues a direction or makes a request under the provisions of Schedule I, or who makes an agreement pursuant to clause I.2.1, provides consent to a dispute about the direction, request or agreement being settled by the Fair Work Commission through arbitration in accordance with clause 40.5—Dispute resolution and section 739(4) of the Act.

3. By deleting clause I.2.1 and inserting the following:

I.2.1 Remote Working Arrangements

(a) Application of clause I.2.1

Clause I.2.1 applies when an employee is undertaking Remote Work as defined in clause I.2.1(b).

(b) Definition of Remote Work

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.

(c) Extended spread of ordinary hours for day workers

(i) Instead of clause 13.3, if an employee engaged on day work is undertaking Remote Work by agreement with their employer and the employee requests and the employer agrees, the spread of ordinary hours of work for the day worker may be between 6.00 am and 10.00 pm, Monday to Friday, and between 7.00 am and 12.30 pm on Saturday.

(ii) Day workers are not shiftworkers for the purposes of any penalties, loadings or allowances under the award, including for the purposes of Part 6—Shiftwork.

(iii) The facilitative provision in clause 13.4, which allows the spread of hours to be altered, will not operate for the employees referred to in clause I.2.1(c)(i).

(d) Ability for employees to elect not to work ordinary hours continuously

An employee undertaking Remote Work is not required by this award to work their ordinary hours continuously as specified by clause 13.6, if this is agreed between the employer and employee.

(e) Flexible starting and finishing times for part-time employees

(i) Notwithstanding clause 10.2(c), an employer and part-time employee are not required to reach agreement as to the starting and finishing times of an employee for any day that the employee will be undertaking Remote Work, if:

(A) they have instead agreed that the employee may choose their starting and finishing times on those days; or

(B) they have instead agreed to start and finish within a specific range of times.

- (ii) Clause 10.3 does not require an employer and employee to reach separate agreements regarding changes to the times at which an employee will start or finish work each day if clause I.2.1(e)(i) applies.

(f) Ability for part-time employees to work non-consecutive hours

- (i) Notwithstanding clause 10.5, an employer is not required to roster a part-time employee so that their hours of work are consecutive, provided that:
 - (A) It has been agreed between the employer and employee that the work does not need to be undertaken continuously; and
 - (B) The employee is provided with at least 3 hours of work on that shift.

(g) Arrangements for taking meal and rest break while undertaking Remote Work

- (i) An employee who is undertaking Remote Work may take any meal or rest break referred to in clause 15 at any time that suits their personal circumstances, instead of taking them at the times prescribed by clause 15, provided that this is agreed to by their employer.

Example: An employee who is working more than 5 hours may elect to take their break at a point in their shift after the first 5 hours of work.

- (ii) An employee who is undertaking Remote Work may alter the configuration of the meal or rest breaks referred to in clause 15 in order to suit their person circumstances instead of taking the breaks in the manner contemplated by clause 15, provided that this is agreed by their employer.

Example: An employee who is entitled to take a meal break of between 30 and 60 minutes under clause 15.3 may instead take 3 breaks of 20 minutes duration.

4. By deleting the words “29 March 2021” appearing in clause I.2.3(e) and inserting “30 June 2021”.

B. This determination comes into effect on 22 December 2020. In accordance with s.165(3) of the *Fair Work Act 2009* (Cth) this determination does not take effect in relation to a particular employee until the start of the employee’s first full pay period that starts on or after 22 December 2020.

PRESIDENT

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