

Australian Industry Group

Modern Awards Review 2023 – 24
Work & Care

Submission – Employer Survey
(AM2023/21)

14 April 2024



AM2023/21 MODERN AWARDS REVIEW 2023 – 24

WORK AND CARE

1. INTRODUCTION

1. On 24 November 2023, the President released a Statement¹ announcing the Fair Work Commission's (**Commission**) intention to conduct a survey of employers (**Survey**) in the context of the '*Work and Care*' stream of the Award Review 2023 - 24 (**Review**). The purpose of the Survey was described as being 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, including questions relating to working from home.²
2. On 8 March 2024, the Commission released a further Statement³ containing a timetable for the release of, and an opportunity for interested parties to comment on, the draft Survey questions.
3. In accordance with the aforementioned Statement, '*proposed survey research questions for comment*' (**Proposed Survey Questions**) were released by the Commission on 5 April 2024. This submission provides comments on those Proposed Survey Questions.

¹ [2023] FWCFB 218 (**November Statement**)

² November Statement at [8].

³ [2024] FWC 607 (**March Statement**)

2. GENERAL COMMENTS

4. As observed earlier, the November Statement indicated that the purpose of the Survey is to gather information about potential variations to modern award provisions that may assist employee carers to balance their work and care responsibilities.

5. The ‘*context*’ provided with the Proposed Survey Questions states: (our emphasis)

Topics include what flexibilities are currently available to employees and may be facilitated by modern awards. The survey will also identify any barriers in modern awards to employers implementing those flexibilities, and any barriers to use and access.⁴

6. The majority of the Proposed Survey Questions (including both the ‘*research questions*’ and ‘*sub-questions*’) are predicated on the term ‘*workplace flexibilities*’. That term is not defined or explained in the draft survey.

7. The Proposed Survey Questions would benefit from some overarching guidance to employers regarding the nature of the arrangements being referred to. Such guidance should be aligned to the stated context for the Survey, as set out at paragraph 5 above.

8. For example, the guidance should include clarification about whether the ‘*workplace flexibilities*’ to which the Proposed Survey Questions relate are (or are not) limited to workplace flexibilities:

- (a) found in modern awards;
- (b) implemented in response to requests for flexible work arrangements made pursuant to s.65 of the *Fair Work Act 2009*;
- (c) implemented using an individual flexibility arrangement; and / or
- (d) that are not required by the safety net (e.g. they are found in a workplace policy or enterprise agreement).

⁴ Proposed Survey Questions on page 1.

9. On its face, it appears that the Proposed Survey Questions potentially relate to all of the above categories. If that is so, this should be clarified.
10. Further, examples of specific workplace flexibilities should potentially be identified as a means of assisting survey respondents to understand the types of arrangements that are relevant to the Survey, including:
 - (a) part-time employment;
 - (b) changes to days of work;
 - (c) changes to start and finish times of work;
 - (d) permitting an employee to work make-up time;
 - (e) agreeing to time-off-in-lieu of overtime; and
 - (f) changes to the location at which work is performed all or some of the time (such as, remote work or working from home arrangements).

3. QUESTION THREE

Sub-questions 3(a) and 3(b)

11. Sub-question 3(a) is in the following terms:

How are requests for flexible work arrangements processed or evaluated in your organisation? (Including discussion of tenure, employment type, performance etc)

12. Sub-question 3(b) is as follows:

What criteria is used to assess whether the business can accommodate flexible working arrangements?

13. The difference between these questions is not clear. Specifically, the difference between '*evaluating*' a request for a flexible working arrangement (for the purpose of sub-question 3(a)) and '*assessing*' whether the business can accommodate a flexible working arrangement (for the purpose of sub-question 3(b)) is unclear.

Sub-question 3(d)

14. Sub-question 3(d) is: (our emphasis)

What have been the typical outcomes when employees with caring responsibilities in the business have encountered, but not met operational requirements for approval of flexible work arrangements?

15. The wording of this question is unclear; particularly the portion underlined above.

4. QUESTION FIVE

16. Sub-question 5(a) is: (our emphasis)

Are there changes that could be made to the relevant workplace instrument(s) to make it easier for employers to approve flexible working arrangements to assist employees to balance work and caring responsibilities?

17. Noting that the purpose of the Survey is to gather information about potential variations to modern award provisions,⁵ this question should be confined to ‘*modern award(s)*’, rather than ‘*workplace instrument(s)*’. We note in particular that responses about other industrial instruments (such as enterprise agreements) are unlikely to be directly relevant to the Commission’s consideration of whether modern awards should be varied.

5. ADDITIONAL QUESTIONS

18. Given the context for, and purpose of, the Proposed Survey Questions, we submit it would also be of utility for the respondents to be asked the following:

- (a) Have you ever refused an employee’s flexible work request because it could not be accommodated under the applicable modern award?
- (b) If so, what type (or types) of flexible work arrangements were being sought?

⁵ See paragraph 4 of the submission.

19. It may be that the additional questions could neatly be annexed to existing Sub-question 5(a) (as new sub-questions 5(b) and 5(c)), as part of the broader Question as to *‘(h)ow can modern awards be amended to enable your business to provider greater flexibilities to employees with caring responsibilities?’*.⁶

⁶ Proposed Survey Questions on page 2.