

ACCI Reply Submission

Variation of Modern Awards to Include a Right to Disconnect Term

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INTRODUCTION

1. ACCI seeks to respond, predominantly to the submissions of unions, with respect to proposals to vary modern awards to include a right to disconnect term, and to the audit of terms in modern awards that may be impacted by the right to disconnect (**Audit**), as provided by the Fair Work Commission (**Commission**).
2. The employee organisations that made submissions are:
 - Australian Council of Trade Unions (**ACTU**);
 - Professionals Australia;
 - Independent Education Union of Australia (**IEU**);
 - National Tertiary Education Industry Union (**NTEU**);
 - Community and Public Sector Union (**CPSU**);
 - Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) Manufacturing Division;
 - Australian Manufacturing Workers' Union (**AMWU**);
 - Australian Nursing and Midwifery Federation (**ANMF**);
 - Australian Services Union (**ASU**); and
 - CFMMEU Construction and General Division.
3. The submissions can be divided into three distinct categories: those that support the ACTU proposed model term without amendment, those that support the ACTU's model term with reportedly industry-specific additions, and those that support the ACTU's model term but seek to amend other award terms in light of the right to disconnect.
4. To the degree that multiple submissions may be dealt with simultaneously, ACCI will do so. This reply submission will address:
 - i. The ACTU proposed model term, which is supported without amendment by CPSU, CFMMEU Manufacturing Division, ANMF, and ASU, in particular, that the ACTU proposed model terms exceeds the minimum safety net required to give effect to the right to disconnect.
 - ii. Submissions from IEU, NTEU, and CFMMEU Construction and General Division, which support the ACTU proposed term and have sought to introduce additional subclauses.
 - iii. Suggested amendments and additions to modern award beyond the right to disconnect, such as those suggested by AMWU and Professionals Australia.

- iv. The Audit compiled by Commission Staff and its implications.
 - v. Submissions of employer groups, in particular, ACCI's support of practical guidance relating to the right to disconnect should be located within the Guidelines to be developed by the Commission.
5. In its original submission, ACCI submitted that proposals seeking to impose additional considerations or restrictions on top of what has been legislated in section 333M of the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) (**Amending Act**) are incongruous with the modern awards objective, which requires modern awards provide a minimum safety net.
 6. Given that section 333M established the right for an employee to refuse to monitor, read or respond to employment-related communication where reasonable, ACCI submits that the right to disconnect term must not introduce restrictions, prohibitions, or caveats relating to contact with employees. ACCI notes that the right to disconnect term is defined in section 12 as a term that 'provides for the exercise of an employee's rights set out in subsections 333M(1) and (2)'. The wording of the definition does not indicate any intention to limit an employer's or a third party's ability to contact employees, therefore the right to disconnect term should not limit or prohibit contact.
 7. Submissions by unions seek to impose conditions and restrictions on employers in the right to disconnect term. Union proposals therefore err with respect to their proposed model clauses and their interaction with the modern awards objective. Whilst unions may consider their proposals to be desirable, the additional considerations are not necessary. Such proposals should not be accepted.
 8. In summary, ACCI's position is that the right to disconnect will be best implemented by adherence to the following principles:
 - The term must focus on the preservation and encouragement of flexibility for employers, employees, and where relevant third parties and avoid rigidity.
 - The right to disconnect is a positive right conferred upon an employee for their exercise, where reasonable to do so. Restriction or prohibition of communication does not give effect to this right.
 - The term must be applicable to every workplace affected by the modern awards. It cannot be laden with laborious detail and must take into account the unique nature of all workplaces impacted by the modern awards.
 9. ACCI's proposal of a broad and non-prescriptive term is consistent with the modern awards objective, noting in particular that unions can negotiate more specific proposals under enterprise agreements. Additionally, ACCI's proposal considers differences across sectors and workplaces. It is a flexible, non-rigid proposal that reduces the likelihood of implementation issues. Given that the right to disconnect is a relatively new concept in the Australian industrial relations landscape, ACCI's proposal ensures that its enactment is workable for all parties involved in the employment relationship and will

provide a suitable foundation for potential variation applications in the event that demonstrable industry-specific concerns arise.

ACTU SUBMISSIONS AND MODEL TERM

10. ACCI is treating the submissions of ACTU, CPSU, CFMMEU Manufacturing Division, ANMF, and ASU as a collective (referred to as **the Unions**), as they all support the ACTU model term with no amendments. ACCI opposes the model term proposed by ACTU as it exceeds the minimum safety net required by the modern awards objective.
11. The key components of the Unions' submissions, and the basis for the ACTU model term were:
 - 'Availability creep'
 - Employer responsibilities to uphold the right to disconnect
 - Factors informing 'reasonableness'.

'Availability Creep'

12. In its submissions, the ACTU focused primarily on what it describes as 'availability creep', which essentially refers to the increased connectivity allowing an employee's work to intrude upon their personal time, outside of working hours. With reference to a submission by Associate Professor Chris F. Wright, the ACTU states that 'workers had an implicit right to disconnect prior to the advent of smartphones'.
13. Technological advances have undoubtedly resulted in circumstances where employees are connected and contactable to a greater degree than they have ever been before, however, they have also allowed for an unparalleled flexibility within the workplace.
14. Employees, now more than ever, are able to engage in informal arrangements with their employers. Connectivity means that if an employee has an unwell pet requiring in-person monitoring they are less likely to be required to deplete their recreational leave to do so, and instead be able to log on to work from the comfort of their home. If an employee is unable to arrange a dental appointment outside of working hours, they are more likely to be able to be briefly absent from the workplace on the proviso that the hours will be made up at a later time. Parents who want to be able to collect children from school are now often able to log on from home to complete their remaining hours. Carers who seek more employment enjoy access to a far more flexible workplace that they can balance with their caring responsibilities. Flexibility works for employees when employers can rely on communication. There is a quid pro quo like arrangement that ensures all parties benefit.
15. Prior to progressions in telecommunications technology and the rapid advancement of connectivity, communication between employees and employers outside work hours, relying largely on fixed telephone lines, was intermittent. However, it cannot be ignored that prior to technological advancements, individuals, in particular women and those with caring responsibilities, were also largely excluded from the workforce. The benefits of flexibility for employees were noticeably absent from the ACTU's submissions.

16. To address 'availability creep', the Unions have suggested to impose responsibilities on employers, as seen in the ACTU model clause, which are dealt with in greater detail below.

Employer Responsibilities

17. The ACTU's model term seeks to impose clauses that give employers additional responsibilities in the form of the following proposed clauses:

Subclause 4 The employer will implement measures to ensure, as far as is reasonably practicable, that an employee is not contacted by phone, electronic communication, or other means when the employee is not working. Such measures will include informing managers, supervisors, and (to the extent practicable) third parties that they cannot expect responses to communications when the employee is not working.

Subclause 5 The employer must advise the employee of their Right to Disconnect and the measures to be taken under Clause 4 above, prior to the implementation of those measures. If an employer is developing a policy on the Right to Disconnect, it must consult workers, their Workplace Delegates and their Employee Organisations.

18. ACCI rejects these additions and, again, submits that this approach is inconsistent with the purpose of the right to disconnect, and incongruous with the modern awards objective.
19. The right to disconnect, as legislated in section 333M, does not at all require an employer to restrict or limit communications with employees, nor does it require them to prevent communication when employees are not working. ACCI submits that such impositions were purposefully not included in section 333M as Parliament never intended to impose restrictions on employers. The ACTU's assertion that these amendments 'give life to the intention of Parliament' is blatantly incorrect. Parliament's intent is clear in the legislation: the empowerment of employees to refuse employment-related communication where it is reasonable to do so.
20. A right to disconnect term that is restrictive or seeks to impose additional considerations is a risk to this flexibility. While some employees may prefer a 9am-5pm job where their work expectations are limited to the eight continuous hours of their engagement, this is simply unachievable for all employees. A broad right to disconnect term respects the individual requirements of employers, employees, and where relevant, third parties. It would allow employers and employees to determine bespoke arrangements that suit their needs, within their individual workplaces, and to manage third party communications in line with those arrangements. It is important to note that bespoke arrangements are still subject to the Commission's consideration of reasonableness, in the event an employee's exercise of their right to disconnect is challenged.
21. ACCI's view is that the right to disconnect term enshrines flexible availability, which benefits all parties involved. To do so, employers must not be subject to additional responsibilities. The right to disconnect is a workplace right and does not require an employer to stop or limit their communication with employees.

22. It must also be considered that a party making contact may also be an employee enjoying a flexible working arrangement, and to limit or prohibit contact may inhibit their ability to carry out their role. It is one thing to ensure that an employee can choose whether they interact with employment-related communication, and another to limit, restrict, or prohibit when that employee is contacted.
23. ACCI submits that to implement a term that limits, restricts, or prohibits communication goes far beyond the extent necessary to give effect to the right to disconnect. The right to disconnect is a positive right conferred upon employees. To limit, restrict, or prohibit communication would be a gross overreach in giving effect to the right to disconnect.

Factors informing 'reasonableness'

24. The ACTU has proposed two additional matters for consideration of when a refusal by an employee to monitor, read or respond to contact from an employer or third party. Specifically:
 - (f) *Whether the employee is on approved leave or another authorised absence.*
 - (g) *Whether the employer has taken all reasonably practicable steps (including making adequate staffing arrangements and planning for workplace fluctuations) to eliminate or minimise the need to contact workers when they are not working.*
25. ACCI does not support these additional considerations. ACCI submits that the list of considerations as contained in section 333M(3) are purposefully non-exhaustive, and that (f) and (g) will likely be considered without a specific requirement to do so.
26. When considering the ACTU's additions in the context of the wording in section 333M(3), (f) will reasonably be contemplated in considering the level of disruption of any contact or attempted contact (section 333M(3)(b)), the extent to which an employee is specifically compensated at the time of the contact (section 333M(3)(c)), and the employee's personal circumstances (section 333M(3)(e)).
27. ACCI categorically rejects the inclusion of (g), as it seeks to impose obligations upon employers. ACCI submits that this is inconsistent with the purpose of the right to disconnect, which seeks to confer a right upon employees to disconnect from work-related communication, where it is reasonable to do so. Section 333M does not impose any responsibilities upon employers with respect to their contacting of employees, therefore ACCI submits that obligations for employers do not form part of the minimum safety net required of the modern award provisions.
28. The ACTU has sought to introduce a provision into the right to disconnect term referring to the provision of technological devices:
 - Subclause 7 The provision of a mobile phone, laptop computer or other electronic device to an employee does not mean an employee is on-call or expected to be available outside their working hours. The employee is not required to provide personal contact information for the purposes of being contactable or conducting work for the employer outside their ordinary working hours or rostered working hours or during periods of approved absence.*

29. ACCI submits that the ACTU's proposed subclause (7) is an unnecessary addition to a right to disconnect term. The provision of devices may not immediately indicate that an employee is on-call, but it may form a consideration of the reasonableness test under section 333M. It is not the place for the modern award term to determine what the provision of a device means for an employee in the context of the right to disconnect, and that the provision of such devices will be specific to the nature of the employees work and the expectations of their role.
30. ACCI expects that when an assessment of reasonableness is conducted, that the provision of devices, in the context of the nature of that employee's role and responsibilities, will be a consideration. For example, an employee's exercise of the right to disconnect where no devices have been provided may be, prima facie more reasonable than where devices have been provided. Similarly, devices may have been provided by an employer for the sole purpose of facilitating on-call requirements, where the employee is being remunerated accordingly. The ACTU has overstepped by proposing that the provision of devices automatically does not give rise to expectation for response to out of hours communication. ACCI submits that this should be assessed on a case-by-case basis, and not included in the right to disconnect term.
31. Similarly, the ACTU goes too far in proposing a term which makes it, essentially, unlawful for an employer to ask for the personal contact details of employees for after-hours contact proposed subclause (7)). Again, this should be decided on a case-by-case basis. It is likely that this information would be reasonably required for emergency situations, for example.
32. ACCI also opposes the addition of the ACTU's proposed subclause (9) on the basis that it contradicts section 333M(5), which specifically states:
- 'For the avoidance of doubt, an employee's refusal to monitor, read or respond to contact, or attempted contact, from their employer, or from a third party of the contact or attempted contact relates to their work, will be unreasonable if the contact is required under a law of the Commonwealth, a State or Territory.' (emphasis added)*
33. For comparison, the ACTU's model term states:
- Subclause 9 The Right to Disconnect does not prevent an employer from making, or attempting to make, contact with an employee that I required to me made (or attempted) in order to comply with an obligation under this Award, the FW Act or the WHS Act; however, an employee may exercise their Right to Disconnect with respect to such contact.*
34. The ACTU's proposed subclause (9) stipulates that while an employer is not prevented from contacting, or attempting to contact, an employee to comply with legislative or award obligations, an employee may exercise their right to disconnect. This is clearly not the case, and this proposed subclause directly contradicts section 333M(5).
35. Furthermore, ACCI submits that it is not appropriate for any element of the right to disconnect term to definitively determine when an exercise of the right to disconnect is either reasonable or unreasonable.

ADDITIONAL TERMS PROPOSED BY EMPLOYEE ORGANISATIONS

36. The IEU, NTEU, and CFMMEU Construction and General Division have supported the proposed ACTU model term and seek to include additional terms that are purported to be industry specific. ACCI reaffirms its opposition to the ACTU's model term, and by extension opposes the additional subclauses proposed by these employee organisations.
37. The proposed additions to the ACTU model term are focused on:
- Classification of out of hours contact as overtime
 - When an employer can contact an employee

Classification of out of hours contact as overtime

38. ACCI rejects proposals that where an employee elects to respond to employment-related communication, that such a choice equates to performance of work, as suggested by CFMMEU Construction and General Division. CFMMEU Construction and General Division have gone as far as to suggest that responding to employment-related communication outside of working hours should attract an overtime payment for a minimum of 3 hours. It is unclear how such a suggestion seeks to advance the modern award objective, or the intent of the legislation.
39. In particular, CFMMEU Construction and General Division have proposed the following addition:
- Subclause 5 An employee who is required to monitor, read, respond to, or otherwise engage with contact or communication from their employer, or a third party in relation to their employment, in circumstances where the employee may otherwise exercise the Right to Disconnect in accordance with this clause, will be paid for all time spent engaging with the contact or communication in accordance with clause X.X – Payment for working overtime, with a minimum payment of 3 hours.*
40. Firstly, ACCI would suggest that where an employee is required to monitor, read, or respond to communication from their employer, they would not otherwise exercise the right to disconnect, and proposes that the CFMMEU Construction and General Division creates unnecessary confusion.
41. Communication where an employee has the choice to respond, i.e. where exercising the right to disconnect is reasonable, cannot be categorised as an inducement to perform duties. If the communication does request that the employee recommence work, and the employee decides to accept that inducement, they will be covered by relevant provisions.
42. CFMMEU Construction and General Division's proposal would result in an employee responding to reject a request to work being paid a minimum of 3 hours at the overtime rate. ACCI opposes this suggestion. Communication may also include correspondence checking on the wellbeing of the employee after a period of absence, or the provision of important information to the employee. Under

this proposal, mere acknowledgement of that communication would invite overtime payments to the employee who is not carrying out any work for the employer. This proposal certainly does not appear to be 'fair' for both employers and employees, as is required.

43. ACCI also considers that this proposal has the potential to discourage separation between an employee and their workplace. Where an employee might otherwise have exercised their right to disconnect, the incentive of remuneration may encourage them to re-engage with their workplace. This proposal does appear to advance the purpose of the right to disconnect, nor does it adhere to the modern award objectives.

When an employer can contact an employee

44. Both the IEU and the NTEU have sought to limit when an employer may contact an employee:

IEU Proposal

- Subclause 10 An employer can contact an employee:*
- (i) When the employee is performing work at the employer's school or premises*
 - (ii) When the employee is performing work away from the school with students*
 - (iii) When it is necessary for the performance of duties set out in clause 15.6 of this award*
 - (iv) Where there are staffing or health-related issues where failure to contact an employee could lead to an employee being disadvantaged*

NTEU Proposal

- Subclause 4 There is no requirement for continuing, fixed term and continuing contingent academic employees to respond to work related communication outside of the following times prescribed for the purpose of this clause:*
- a) Outside the hours of 8am-6pm Monday to Friday, or in the case of part time employees outside of these hours on the days that work is performed; or*
 - b) One hour before or after a teaching delivery period*
- Subclause 5 Casual academic employees have a Right to Disconnect outside of teaching delivery hours, with the exception of the performance of paid other required academic activity to be performed at scheduled times, such as required attendance at scheduled meetings with their academic supervisor, scheduled student consultation periods, scheduled consultation meeting etc.*

45. It is uncontested that an employer can contact an employee when they are working. A provision of this nature has no place in the modern awards. ACCI interprets the IEU's proposal as an attempt to

limit an employer's contact with an employee, that is to say, that an employer is unable to contact an employee outside of the occasions specified.

46. The proposal from the IEU which stipulates specific circumstances when an employer may contact an employee is opposed by ACCI, for reasons previously mentioned: the right to disconnect is not intended to limit circumstances when an employer may contact an employee. The only assessment for consideration, under legislation, is whether an employee's exercise of the right to disconnect is reasonable in their circumstances. ACCI submits that the introduction of any other restrictions is excessive to giving effect to the right to disconnect and is contrary to the purpose of the legislation.
47. The NTEU has proposed the inclusion of specified times or circumstances where employees are entitled to exercise the right to disconnect. ACCI opposes the inclusion of clauses that seek to define specific circumstances or times where an employee exercising their right to disconnect will be reasonable. It is ACCI's view that an exercise of the right to disconnect should be assessed on a case-by-case basis, with reference to the list of legislated considerations, and any other relevant considerations.
48. It must be noted that according to the legislation, an employee has the right to disconnect at all times outside of working hours, when exercise of that right is not unreasonable. Inclusion of terms such as those suggested by employee organisations will create confusion on occasions where an employer or third party may be contacting or attempting to contact an employee to comply with a law of a Commonwealth, State or Territory. Refusal to monitor, read, or respond to such contact is deemed unreasonable under section 333M(5).

AWARD AMENDMENTS OUTSIDE OF RIGHT TO DISCONNECT

49. AMWU and Professionals Australia have used this consultative process to request amendments to modern awards they have interest in, that go beyond the insertion of a right to disconnect term. ACCI strongly opposes this forum being used as a means to vary modern awards where those variations are not limited to the right to disconnect term.
50. Variations to other clauses or the additional of clauses to an award will be more appropriately handled after the implementation of the right to disconnect term so the Commission can arrange a hearing or conference to be adequately informed by all interested parties. ACCI acknowledges the ability of the Commission to vary modern award terms to remove ambiguity or uncertainty, or to correct an error on its own initiative, however, ACCI considers that where broader changes are being proposed in addition to the inclusion of the right to disconnect term, that this consultative process does not allow sufficient time to accommodate submissions where there is a potential for 155 instruments to be individually amended.
51. If, when the right to disconnect term is implemented, a specific modern award contains an ambiguity, interested parties may apply to the Commission to have the modern award varied, and will be able to provide real examples of the ambiguity. ACCI suggests that this process is more helpful in assisting the Commission in settling on terms that are fit for purpose and will work in practice.
52. The AMWU's proposals, in particular, are contingent on the ACTU's model term being accepted in its entirety. ACCI is of the view that until the right to disconnect term has been drafted and implemented, it may not be clear all the ways it will interact with other clauses in the award, and that AMWU can make an application to vary the relevant awards in the event of ambiguity at the time ambiguities arise.
53. Professionals Australia's submission requests a span of hours be incorporated into the right to disconnect term for the Professional Employees Award, on the basis of wording in the President's Statement, where it is suggested that the right to disconnect may limit work communications to within a span of hours. ACCI has opposed any limitations on when an employer or third party may contact an employee, on the basis that it is excess to the minimum safety net required to give effect to the right to disconnect, and it is incongruous with the modern awards objective as well as the intent of government, as previously discussed. To that end, ACCI does not support this modern award suggestion.
54. The Audit has illuminated the vast array of terms that are likely to interact with the right to disconnect term. ACCI considers that a broad and non-prescriptive right to disconnect term will dovetail with other clauses, with the likely effect being that other terms will inform whether an exercise of the right to disconnect by an employee was reasonable in the circumstances.

55. The limited timeframe within which the Commission must introduce the right to disconnect term is not conducive to the introduction of individual terms for each of the 155 instruments being varied as a result of this process. ACCI submits that it is preferable for the Commission to introduce a standard term, and interested parties who consider a more specific variation is required can submit an application for variation with their reasons for that request.

RESPONSE TO THE AUDIT

56. On 23 May 2024, the Commission released the Audit, which contains an extensive list of provisions that may impact a right to disconnect. The Audit document has targeted particular provisions that are more likely to impact the development of a right to disconnect term, specifically:
- Spans of hours, including ordinary hours of work and arrangements for shiftwork.
 - Requirements for employers to contact or provide notice to employees.
 - Requirements for employees to be on call, recall to duty or remain on standby in readiness to return to duty.
 - Classifications that include manager or supervisory responsibilities.
57. The Audit includes all 155 modern awards and has collated the relevant provisions into a table spanning over 125 pages.
58. ACCI seeks to provide high-level observations on the Audit and its contents, noting that the limited timeframes for reply do not allow for the provision of evidence or detailed analysis. ACCI submits that this Audit supports the implementation of a broad, non-prescriptive right to disconnect term. Such a term would avoid ambiguity and would be informed by other already-existing clauses of modern awards. The terms contained in the Audit would be primarily used to inform an assessment of whether an employee's exercise of the right to disconnect was reasonable in the circumstances.
59. ACCI's interpretation of the Audit is that the provisions listed have the potential to impact on the right to disconnect, not vice versa. That is to say, that where the above provisions exist in an award, they will likely formulate the basis for determining whether an exercise of the right to disconnect is reasonable.
60. Furthermore, ACCI notes the sheer breadth of the Audit, along with the limited legislative timeframe within which the Commission must implement a right to disconnect term. A broad term is required to ensure that the right to disconnect does not operate in contradiction to other provisions within modern awards and to ensure the timely introduction of the term.

Span of hours

61. It is important to note that the right to disconnect refers to work-related communication from third parties as well as employers. Third parties may include a range of people, including but not limited to clients, contractors, and colleagues. ACCI submits that a span of hours being used to limit communication between an employer and employee goes beyond what is required to affect the right to disconnect. Additionally, it has the potential to detrimentally impact the flexibility of a workplace. That is to say, not all working hours are confined to a modern award defined span of hours. Where an employee is enjoying a flexible working arrangement where they work different hours to their

colleagues, they must not be restricted from communicating, or attempting to communicate with their colleagues. ACCI submits that communications, and expectations of responses are best handled within the workplace, for example, emails may include a term to the following effect:

'My working hours may not be the same as your working hours. Please do not feel obligated to respond to this communication until you resume your duties.'

62. A span of hours is likely going to be a factor to be considered when determining whether the exercise of the right to disconnect is reasonable in the circumstances, for example, where an employee is subject to a flexible working arrangements at their request and has finished work for the day, contact from their employer within their modern award defined span of hours, may come with an expectation for response, and an exercise of the right to disconnect may not be considered reasonable.

Requirements for contact

63. The Audit demonstrates that there are circumstances where employers are required to contact employees for an array of reasons, including to provide them with a minimum notice period. This may include, but is not limited to, communications relating to safety or a change in shift or worksite. Where notification is required, it may be unreasonable for the employee to exercise their right to disconnect, in order for confirmation that the notice period has been enacted.
64. ACCI submits that due to the existence of these provisions, any terms limiting the employer's ability to contact employees is going to cause confusion and risk contradicting terms that already exist in the modern awards. The right to disconnect term must exist harmoniously with other terms of awards.

On-call or stand by provisions

65. Where an employee is required to be on call, per a provision in the relevant modern award, refusal to read, monitor, or respond to contact may be unreasonable. By requiring an exercise of the right to disconnect to be 'reasonable', section 333M has accepted that there will be instances where an employee may be expected or required to monitor, read, or respond to work-related communication. The right to disconnect has been clearly worded to operate outside of those circumstances and the right to disconnect term should not introduce any restrictions or considerations contradicting modern award terms that already exist. A broad right to disconnect term ensures that modern awards will be congruous with other award terms, simple, and easy to understand, as required by section 134(g) of the FW Act.
66. ACCI submits that the existence of on-call terms, or terms that require an employee's availability for contact should not cause practical issues for parties, so long as the right to disconnect term is broadly drafted. On-call or stand by provisions will inform whether the exercise of a right to disconnect is reasonable.

Classifications including manager or supervisory responsibilities

67. ACCI submits that classifications including manager or supervisory responsibilities are likely to be considered when an assessment of reasonableness for an exercise of the right to disconnect is taking place.
68. ACCI notes that often managerial or supervisory responsibilities incur payment of an allowance, which would be considered when the Commission assesses compensation for availability, pursuant to section 333M(3)(c)(i).
69. ACCI does not consider that the right to disconnect should disrupt these existing terms, and should be implemented in such a way that they can be read in conjunction with one another. A broad, non-prescriptive term is the most effective method of doing so.

RESPONSE TO EMPLOYER GROUPS

70. ACCI notes that the common theme among employers and employer associations is that a broad, simple, and non-prescriptive right to disconnect term in line with section 333M is preferred. ACCI would also like to highlight concerns raised on behalf of small businesses. A right to disconnect term that is reflective of section 333M not only satisfies the minimum safety net as required by the modern awards objective, but it also ensures that employers are not overly encumbered with accommodating the legislative right to disconnect, as well as any specific amendments that may apply to an applicable award. It is anticipated that this would disproportionately impact small business employers.
71. ACCI supports the submissions of employer groups. ACCI also notes that the Australian Industry Group (**AiG**) and the Australian Retailers Association (**ARA**) have both submitted model terms for the Commission's consideration. These terms are consistent with ACCI's proposed approach.
72. ACCI notes that the AiG and the ARA have both addressed the contents of the Guidelines to be drafted by the Commission. ACCI supports these suggestions and recommends that the Guidelines can provide for information about how the right to disconnect term may interact with other award terms.
73. The Guidelines being drafted by the Commission will be a helpful resource to employers and employees in educating how the right to disconnect may work in practice. The Guidelines should clearly establish that they are not prescriptive and serve only to provide information and guidance. ACCI agrees with the submissions of the Australian Industry Group with respect to their suggestions for contents of the Guidelines.
74. Since the Guidelines are not binding, and do not represent the Commission's views, they are able to contemplate relevant factors for the consideration of reasonableness, in addition to those prescribed by Amending Act. Ensuring that employers and employees are educated regarding the right to disconnect will be of greater utility in effecting that right than the implementation of a prescriptive term.



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