

Form F46 – Joint Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	-		
Surname	-		
Postal address	Commerce House Level 3, 24 Brisbane Avenue		
Suburb	Barton		
State or territory	ACT	Postcode	2600
Phone number	(02) 6270 8000	Fax number	
Email address	Scott.barklamb@australianchamber.com.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	Australian Chamber of Commerce and Industry
Trading name of business	Australian Chamber of Commerce and Industry
ABN/ACN	85 068 391 795
Contact person	Scott Barklamb, Director - Workplace Relations

Applicant

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:
First name(s)	-
Surname	-
Postal address	51 Walker Street

Suburb	North Sydney		
State or territory	NSW	Postcode	2060
Phone number	0418 461183	Fax number	
Email address	stephen.smith@aigroup.com.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	The Australian Industry Group
Trading name of business	Ai Group
ABN/ACN	76 369 958 788
Contact person	Stephen Smith, Head of National Workplace Relations Policy

Does either Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes – Specify language

No

Does either Applicant require any special assistance at the hearing or conference (eg a hearing loop)?

Yes – Please specify the assistance required

No

Does either Applicant have a representative?



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – ACCI's representative's details are below.

No - Ai Group does not have a representative.

ACCI's representative



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person	Nigel Ward, CEO & Director Luis Izzo, Managing Director - Sydney Workplace		
Firm, organisation or company	Australian Business Lawyers & Advisors		
Postal address	Level 15, 140 Arthur Street		
Suburb	North Sydney		
State or territory	NSW	Postcode	2060
Phone number	(02) 9458 7005	Fax number	
Email address	nigel.ward@ablawyers.com.au luis.izzo@ablawyers.com.au		

Is ACCI's representative a lawyer or paid agent?

Yes

No

1. Coverage

1.1 What is the name of the modern award to which the application relates?



Include the Award ID/Code No. of the modern award

Clerks - Private Sector Award 2010 MA000002

1.2 What industry is the employer in?

Not applicable

2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

a determination varying a modern award

a modern award

a determination revoking a modern award

2.2 What are the details of your application?

See Annexure A.

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.


See Annexure B.


Attach additional pages, if necessary.

Signatures



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Nigel Ward
Date	24 March 2020
Capacity/Position	Representative of ACCI

Signature	
Name	Stephen Smith
Date	24 March 2020
Capacity/Position	Head of National Workplace Relations Policy for Ai Group



DRAFT DETERMINATION

Fair Work Act 2009

s.157 – Application to vary a modern award to achieve the modern awards objective

Clerks – Private Sector 2010

(AM2020/_____)

PRESIDENT ROSS

XXXXX

XXXXX

_____ 2020

Award schedule – COVID-19 pandemic

A. Further to the decision [_____] issued by the Full Bench of the Fair Work Commission on _____ 2020, the above award is varied as follows:

1. In the Table of Contents add a new Schedule I.
2. Add the following Schedule I to the award:

Schedule I - Award flexibility during the COVID-19 Pandemic

- X.1** The provisions of this schedule are aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic and not to set any precedent in relation to award entitlements after its expiry date.
- X.2** Schedule I operates from _____ 2020 until 30 June 2020. The period of operation can be extended on application.
- X.3** A reference in this schedule to an employee “working from home” is to be read as a reference to an employee who is working from home because of measures in response to the COVID-19 pandemic.
- X.4** During the operation of Schedule I, the following provisions apply:

Operational flexibility

- (a) An employee will perform all duties that are within their skill and competency regardless of their classification under clause 15 and Schedule B, provided that the duties are safe, and the employee is licensed and qualified to perform them, where necessary. No employee shall have their pay reduced as a result of being directed to perform duties in accordance with this clause.

Part-time employees working from home

- (b) Instead of clause 11.5, for a part-time employee who is working from home by agreement with the employer, the employer is required to roster the employee for a minimum of two consecutive hours on any shift.

Casual employees working from home

- (c) Instead of clause 12.4, for a casual employee who is working from home by agreement with the employer, the employee is entitled to a minimum payment of two hours' work at the appropriate rate.

Ordinary hours of work for employees working from home

- (d) Instead of clause 25.1(b), where an employee requests and the employer agrees, the spread of ordinary hours of work for day workers is between 6.00am and 11.00pm, Monday to Friday, and between 7.00am and 12.30pm on Saturday, for employees working from home by agreement with the employer.
- (e) Day workers are not shift workers for the purposes of any penalties, loadings or allowances under the award.
- (f) The facilitative provision in clause 25(2), which allows the spread of hours to be altered, will not operate for the employees referred to in subclause (d).

Agreed temporary reduction in ordinary hours

- (g) An employer and the full-time and part-time employees in a workplace or section of a workplace, may agree to temporarily reduce ordinary hours of work for the employees in the workplace or section for a specified period while this schedule is in operation. The approval of at least 75% of the full-time and part-time employees in the relevant workplace or section shall be required.
- (h) For the purposes of subclause (g), ordinary hours of work may be temporarily reduced:
 - (i) For full time employees, to not fewer than 75% of the full-time ordinary hours applicable to an employee immediately prior to the implementation of the temporary reduction in ordinary hours.
 - (ii) For part-time employees, to not fewer than 75% of the part-time employee's ordinary hours immediately prior to the implementation of the temporary reduction in ordinary hours.

- (i) Where a reduction in hours takes effect under subclause (g), the employee's ordinary hourly rate will be maintained but the weekly wage will be reduced by the same proportion.
- (j) Nothing in this schedule prevents an employer and an individual employee agreeing in writing (including by electronic means) to reduce hours or to have an employee move temporarily from full-time to part-time hours of work, with a commensurate reduction in the minimum weekly wage.
- (k) For an employee whose hours have been reduced in accordance with subclause (g):
 - (i) the employer must not unreasonably refuse an employee request to engage in reasonable secondary employment; and
 - (ii) the employer must consider all reasonable employee requests for training, professional development and/or study leave.
- (l) For the purposes of subclause (g), where there is any reduction in the ordinary hours of work for full-time or part-time employees in a workplace or section during the period this schedule is operation, all relevant accruals and all entitlements on termination of employment will continue to be based on each employee's weekly ordinary hours of work prior to the commencement of this schedule.
- (m) For the purposes of subclause (g), the support of employees shall be determined by a vote of employees. In order for the vote to be valid, the employer must comply with the following requirements:
 - (i) Where any of the employees are known to be members of the Australian Services Union or another organisation, the ASU or other organisation shall be informed before the vote takes place.
 - (ii) Prior to the vote of employees, the employer shall provide the employees with the contact details of the ASU, should they wish to contact the ASU for advice.
 - (iii) The employer must notify the Fair Work Commission by emailing XXXX@fwc.gov.au that the employer proposes to conduct a vote under this schedule. The employer shall provide the work email addresses of the employees who will be participating in the vote, to the Commission. The Commission will then distribute the ASU COVID-19 Information Sheet to the employees prior to the vote. The Commission shall list the name of the business on a register which will be accessible to the ASU, upon request, for the period when this schedule is in operation.

- (iv) The vote shall not take place until at least 24 hours after the requirements of paragraph (i), (ii) and (iii) have been met.

Annual leave

- (n) Employers and employees may agree to the taking of up to twice as much annual leave at a proportionately reduced rate for all or part of any agreed or directed period away from work, including any close-down.
- (o) Instead of clauses 29.6, 29.7 and 29.8, an employer may direct an employee to take any annual leave that has accrued, by giving at least one week's notice, or any shorter period of notice that may be agreed. A direction to take annual leave shall not result in an employee having less than two weeks of accrued annual leave remaining.

Close down

- (p) Instead of clause 29.5 and subject to subclause (q), an employer may:
 - (i) require an employee to take annual leave by giving at least one week's notice as part of a close-down of its operations, or part of its operations, or any shorter period of notice that may be agreed; and
 - (ii) where an employee who has not accrued sufficient leave to cover part or all of the close-down, the employee is to be allowed paid annual leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the closedown.
- (q) Subclause (p) does not permit an employer to require an employee to take leave for a period beyond the period of operation of this schedule.

B. This determination comes into effect on _____2020.

PRESIDENT

Annexure B

General

1. The Australian Chamber, the Australian Industry Group, the ACTU and the Australian Services Union have been in dialogue to reach a consent position on changes to the Award that can mitigate against the current impacts COVID-19 is having on employees and employers covered by the Clerks - Private Sector Award 2010 MA000002 (the **Award**).
2. This Application is the product of that dialogue and is moved by consent of the parties.
3. The variations to the Award are necessary to achieve the Modern Awards Objective in the circumstances of the COVID-19 virus.

COVID-19

4. Coronaviruses (CoV) are a large family of viruses that cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS-CoV) and Severe Acute Respiratory Syndrome (SARS-CoV).¹
5. Coronavirus disease (COVID-19) is a new strain that was discovered in 2019 and has not been previously identified in humans.
6. Common signs of infection include respiratory symptoms, fever, cough, shortness of breath and breathing difficulties. In more severe cases, infection can cause pneumonia, severe acute respiratory syndrome, kidney failure and even death.
7. Most people (about 80%) recover from the disease without needing special treatment. Around 1 out of every 6 people who gets COVID-19 becomes seriously ill and develops difficulty breathing.²
8. In December 2019 / January 2020, an outbreak of a new virus and disease began in Wuhan, China, which was subsequently identified as a new type of coronavirus.³
9. As of 20 January 2020, confirmed cases of COVID-19 were reported from three other countries, including Thailand, Japan and the Republic of Korea (South Korea).⁴

¹ [World Health Organisation.](#)

² [World Health Organisation.](#)

³ [World Health Organisation.](#)

⁴ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10_4

10. COVID-19 cases continued to spread to Europe, and on 25 January 2020 Australia reported its first confirmed case.⁵

11. According to the World Health Organisation (WHO), as at 24 March 2020 there were 190 countries, areas or territories with cases.⁶

COVID-19 progresses from an epidemic to a pandemic

12. On 30 January, the WHO declared the outbreak a Public Health Emergency of International Concern (PHEIC), following a second meeting of the Emergency Committee convened under the International Health Regulations. This was largely due to the concern of the potential for the virus to spread to countries with weaker health systems, and which are ill-prepared to deal with it.⁷

13. On 11 March 2020, the WHO Director-General characterized COVID-19 as a pandemic.

14. The WHO Director-General stated that the WHO has been assessing the outbreak around the clock and are deeply concerned both by the alarming levels of spread and severity, therefore impacting its decision.⁸

15. In the two weeks prior to that characterization, the number of cases of COVID-19 outside China had increased 13-fold, and the number of affected countries has tripled. At that point (11 March), there were more than 118,000 cases in 114 countries, and 4,291 people had lost their lives.

COVID-19 in Australia

16. Globally, at 23 March 2020, there have been more than 300,700 confirmed cases of COVID-19 and more than 13,900 deaths.⁹

⁵ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200125-sitrep-5-2019-ncov.pdf?sfvrsn=429b143d_8

⁶ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

⁷ [https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihf-emergency-committee-on-novel-coronavirus-\(2019-ncov\)](https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihf-emergency-committee-on-novel-coronavirus-(2019-ncov))

⁸ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

⁹ <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-current-situation-and-case-numbers>

17. It took over three months to reach the first 100,000 confirmed cases, and only 12 days to reach the next 100,000.¹⁰
18. In Australia, as at 3pm on 20 March 2020 there have been 1,709 confirmed cases of COVID-19. Of those, 7 have died from COVID-19. There have been 313 new cases since 3pm on 23 March 2020. Of the 1,709 confirmed cases in Australia, 7 have died from COVID-19.¹¹
19. Analysis shows the number of confirmed cases of COVID-19 in Australia is doubling every 3-4 days.¹²

Government Response

20. The Government has made a number of announcements so far on actions to protecting the Australian community from the spread of COVID-19.
21. On 13 March 2020, Commonwealth, State and Territory governments agreed to provide public advice against holding non-essential, organised public gatherings of more than 500 people from Monday 16th March 2020.¹³
22. On 18 March 2020, the Government announced:¹⁴
- a. All non-essential indoor gatherings of greater than 100 people (including staff) will no longer be permitted from Wednesday 18 March 2020.
 - b. Outdoor events of more than 500 attendees may not proceed.
23. On 20 March 2020, the Government announced in addition to the above that for all non-essential indoor gatherings of fewer than 100 people including that in a given occupied space, there must be a density of no more than one person per four square meters of floor space, from 20 March 2020.¹⁵
24. On 22 March 2020, the Government announced that a number of facilities are to be restricted from opening from midday on 23 March. These include:¹⁶

¹⁰ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200319-sitrep-59-covid-19.pdf?sfvrsn=c3dcdef9_2

¹¹ <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-current-situation-and-case-numbers>

¹² See Inga Ting, Michael Workman and Mark Doman, 'Coronavirus data reveals how COVID-19 is spreading in Australia', *ABC News*, 20 March 2020.

¹³ The Hon. Scott Morrison MP, Prime Minister, Media Statement, 'Advice on coronavirus', 13 March 2020.

¹⁴ The Hon. Scott Morrison MP, Prime Minister, Media Statement, 'Update on coronavirus', 18 March 2020.

¹⁵ The Hon. Scott Morrison MP, Prime Minister, Media Statement, 'Update on coronavirus', 20 March 2020.

¹⁶ <https://www.pm.gov.au/media/update-coronavirus-measures-220320>

- a. Pubs, registered and licenced clubs (excluding bottle shops attached to these venues), hotels (excluding accommodation)
- b. Gyms and indoor sporting venues
- c. Cinemas, entertainment venues, casinos, and night clubs
- d. Restaurants and cafes will be restricted to takeaway and/or home delivery
- e. Religious gatherings, places of worship or funerals (in enclosed spaces and other than very small groups and where the 1 person per 4 square metre rule applies).

25. On 24 March 2020, the Government announced that the restrictions would apply to the following facilities from midnight on 26 March:

- a. Amusement parks and arcades
- b. Indoor and outdoor play centres
- c. Community and recreation centres, health clubs, fitness centres, yoga, barre, spin facilities, saunas, wellness centres, boot camps
- d. Personal training is limited to a maximum of 10 people
- e. Social, sporting-based activities, swimming pools
- f. Beauty therapy, tanning, waxing, nail salons and tattoo parlours
- g. Weddings can go ahead with no more than five people and funerals can go ahead with no more than 10 people. Both are subject to social distancing rules
- h. Galleries, museums, national institutions, historic sites, libraries, community centres, nonessential facilities, community facilities such as halls and PCYCs
- i. Food courts in shopping centres will no longer be able to continue, though takeaway can continue
- j. Auction houses, open house inspections, gathering in auction rooms
- k. Outdoor and indoor markets will be addressed specifically in individual states and territories

26. These measures are in the addition to the travel bans that were initially in place for China, Italy, Iran and the Republic of Korea (South Korea), before the Government's decision to close its

borders to all non-citizens and non-residents from 9pm on 20 March 2020,¹⁷ affecting tourists that may have otherwise frequented Australian businesses.

State Health Orders declared to give effect to the Government announcements

27. Measures to reduce exposure to CoV have been given effect to by the states, under public health orders issued under their respective Public Health Acts or equivalent.

Government Economic Intervention

28. On 12 March 2020, the Australian Government announced COVID-19 a pandemic and introduced a \$17.6 billion economic stimulus package to support the economy in the first half of 2020.¹⁸ The package included payments to provide cash flow support for small to medium businesses (turnover up to \$50 million) and wage subsidies for apprentices and trainees of up to 50% of their wages. These measures were both targeted at assisting employers to retain employees over the next six to 12 months, keeping people in work to lessen the number of workers that are laid off.

29. On 22 March 2020, the Government announced further stimulus measures that build on and strengthen measure announced in the first stimulus package.

30. The package has three parts targeted at supporting individuals and households, businesses and the flow of credit.

Supporting individuals and households

31. Income support to households, casual workers and sole traders through a time-limited Coronavirus supplement has been increased. Measures include increases in both income support for individuals and payments to support households, and early access to superannuation.

Support for business

32. The Boosting Cash Flow measure announced in the first package is enhanced by increasing the maximum payment to \$100,000 and the minimum payment to \$20,000 and extending

¹⁷ <https://www.pm.gov.au/media/border-restrictions>

¹⁸ The Treasury 2020 *Economic Response to Coronavirus*. Commonwealth of Australia. <https://treasury.gov.au/coronavirus>

eligibility to not-for-profits. Temporary relief is provided for financially distressed businesses to reduce the threat of actions that could put them out of business.

Support for the flow of credit

33. A Coronavirus SME Guarantee Scheme has been established to provide otherwise viable businesses access funding of up to \$250,000 from banks. Red tape has been cut to provide lenders to small businesses with temporary exemption from responsible lending obligations.
34. The stimulus measures are addressed through the *The Coronavirus Economic Response Package Omnibus Bill 2020*, which passed by Parliament on 24 March 2020.

Other Initiatives

35. The Australian Banking Association has announced that small businesses impacted by the COVID-19 pandemic will be able to defer their loan repayments for six months.

COVID-19 Impact on the Australian Stock Market

36. With COVID-19 continuing to spread to more countries at the end of February, the financial markets began to react both in Australia and international, in response to fears of a longer-term economic impact.
37. Companies across the board have grappled with an uncertain earnings outlook, withdrawing their earnings forecasts in droves, causing wild swings in the market day by day.¹⁹
38. The ASX200 lost 33% between 21 February and 19 March 2020.²⁰
39. To the week end 20 March 2020, the S&P/ASX 200 Index closed the week 13.1% lower at 4816.6, with \$703.3 billion being wiped off the boards in the last four weeks.²¹ This is the second largest fall on record, surpassing the 10.9% decline seen in the previous week.²² Only the a 15.6% slide in October 2008, during the peak of the Global Financial Crisis, has been larger since the index was created in 2000.²³

¹⁹ William McInnes, '[ASX ends week 13pc lower, rocked by coronavirus uncertainty](#)', *AFR*, 20 March 2020.

²⁰ Melissa Yeo, '[ASX down 13pc for the week, 33pc decline from February 20 record high close](#)', *The Australian*, 20 March 2020.

²¹ William McInnes, '[ASX ends week 13pc lower, rocked by coronavirus uncertainty](#)', *AFR*, 20 March 2020.

²² <https://www.smh.com.au/business/markets/asx-posts-largest-weekly-fall-since-gfc-20200320-p54cd0.html>

²³ <https://www.smh.com.au/business/markets/asx-posts-largest-weekly-fall-since-gfc-20200320-p54cd0.html>

RBA Position

40. Many businesses, in particular those that have been forced to shut their doors now have little to no revenue coming in, so they do not have enough cash flow available to pay their bills, wages, rent and other outputs.
41. On 19 March 2020, the RBA announced it would be introducing quantitative easing measures to stem the deterioration of trading liquidity. These measures include buying Australian Government bonds on the secondary market to support the smooth functioning of the market and short term (1-month and 3-month) repo operations to provide liquidity to financial markets.²⁴
42. In addition, the RBA lowered the cash rate to a historic low of just 0.25% following an extraordinary meeting of the Board.²⁵ The banks have responded by handing that on in full, so small business loans will be reduced by 0.25%.
43. In addition, the RBA is providing a \$90 billion, 3-year funding facility to Authorised Deposit-taking Institutions (i.e. banks and other lenders), so they can make more money available to loan to businesses. The ADIs will be able to obtain funding for up to 3% of outstanding credit and can draw additional funding if they increase lending to business – 1% for every \$1 to large business and 5% for small business.

Australian Economy Generally

44. The risks, and potential impact of COVID-19 on the Australian economy are increasing by the day. It is very clear it will have a major impact on economic growth in 2020.
45. Treasurer Josh Frydenberg stated on 19 March 2020 that a recession was now "very hard to avoid".²⁶ It has also been predicted that Australia's economic growth in 2020 will be the worst since the Great Depression.²⁷
46. On 19 March 2020, Philip Lowe, Governor of the RBA said:²⁸

²⁴ Reserve Bank of Australia - Media release 19 March 2020 *Statement on Monetary Policy Decision* - <https://www.rba.gov.au/media-releases/2020/mr-20-08.html>

²⁵ Reserve Bank of Australia *Monetary Policy Decision*. 19 March 2020 - <https://www.rba.gov.au/media-releases/2020/mr-20-06.html>

²⁶ <https://www.afr.com/politics/federal/later-government-relents-on-newstart-concedes-recession-likely-20200319-p54blv>

²⁷ <https://www.theaustralian.com.au/business/economics/coronavirus-prediction-australian-economic-growth-to-be-worst-since-great-depression/news-story/7bb9ddcf4da09ef38539e3e8d45f050c>

²⁸ <https://www.rba.gov.au/media-releases/2020/mr-20-08.html>

The coronavirus is first and foremost a public health issue, but it is also having a very major impact on the economy and the financial system. As the virus has spread, countries have restricted the movement of people across borders and have implemented social distancing measures, including restricting movements within countries and within cities. The result has been major disruptions to economic activity across the world. This is likely to remain the case for some time yet as efforts continue to contain the virus.

47. On 3 March 2020 the Reserve Bank of Australia (RBA) cut the cash rate to a new record low of 0.50% at its board meeting in early March. In the accompanying statement, RBA Governor Lowe said this was a pre-emptive move "to support the economy as it responds to the global coronavirus outbreak".²⁹ On 19 March 2020, the RBA lowered the cash rate to a historic low of just 0.25% following an extraordinary meeting of the Board.³⁰
48. In terms of unemployment, on 18 March 2020, Westpac chief economist Bill Evans predicted that Australia's unemployment rate would spike to 7 per cent in October, up from his previous forecast of 5.8 per cent to 6 per cent due to the abrupt slowdown in the economy.³¹ There is commentary that this estimate now looks, "if anything, optimistic".³² Analysts at investment bank UBS predicts unemployment will increase to as much as 8%.³³
49. Globally, International Monetary Fund managing director Kristalina Georgieva said the economic outlook for the world economy for 2020 "is negative—a recession at least as bad as during the global financial crisis or worse. But we expect recovery in 2021".³⁴

Impacts on Office Work

50. Office work is currently materially impacted by CoV.
51. Most offices in CBDs and major towns are now empty with employees encouraged to work from home as far as practicable.

²⁹ RBA, Statement by Philip Lowe, Governor: Monetary Policy Decision, 3 March 2020.

<https://www.rba.gov.au/media-releases/2020/mr-20-06.html>

³⁰ Reserve Bank of Australia *Monetary Policy Decision*. 19 March 2020 - <https://www.rba.gov.au/media-releases/2020/mr-20-06.html>

³¹ Richard Gluyas, 'Coronavirus: Scott Morrison to unveil huge package of fiscal and monetary measures', *The Australian*, 18 March 2020.

³² See Jennifer Hewett, 'Australia enters the great unknown', *AFR*, 18 March 2020.

³³ Ben Butler, "'They're going to go under': Australia's coronavirus-hit restaurants, bars and caterers seek bailout', *The Guardian*, 18 March 2020.

³⁴ <https://www.afr.com/policy/economy/imf-forecasts-2020-global-recession-recovery-in-2021-20200324-p54d7h>

52. Those still attending work are adopting new work patterns to reduce the level of exposure to colleagues.

53. This includes rostering a limited number of employees into work at any one time and spacing employees out in the physical office environment.

Section 157

54. This application is made pursuant to section 157 of the *Fair Work Act 2009* (the **Act**).

55. Section 157 empowers the Fair Work Commission (the Commission) to vary modern awards if necessary to meet the Modern Awards Objective (the **MAO**).

56. The MAO requires the Commission to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions generally and having regard to the matters set out in section 134 (1) of the Act.

57. The applications seek to vary the Clerks Private Sector Modern Award in unprecedented circumstances; the COVID-19 pandemic (the **Pandemic**).

58. As set out above the Pandemic has had a material impact on Asian, American and European countries and is progressively spreading to all parts of the globe and now Australia.

59. The Pandemic is unusual in that it has a level of infection akin to the common cold.

60. The Pandemic results in a death rate materially higher than the 'flu'; depending on the country exposed 0.1% for the flu to >3% for the Pandemic.

61. The Australian Government (supported by State and Territory Governments) has implemented a series of measures (the **Measures**) as discussed above to:

(a) slow the progress of the Pandemic in Australia in an endeavour to protect the health system from being 'overwhelmed' which if this occurred could materially increase the death rate; and

(b) cushion the economic impact of the Pandemic.

62. These Measures have forced various categories of people to self-isolate, withdraw from working at the slightest suggestion of being unwell, curtail normal social activities, cease some businesses from operating, work from home or adopt unusual working arrangements.

63. The pressures on business at this time are multifaceted and cumulative in nature; demand, cash flow, viability.
64. The impact on employers and employees is material.
65. For casual employees the impact comes in reduced hours of employment through to no work at all as casual employees are likely the first casualty with business being forced to contract in the face of the Pandemic.
66. For permanent employees the challenge is temporary but necessitates an increased need for flexibility followed by sustaining ongoing employment against increasing commercial pressure to reduce cost.
67. This is resulting in the necessary stepped approach for business; balancing decreased cash flow against maintaining employment.
68. In such a context employers and employees (and their unions) are now in a dialogue to maintain the business while trying to maintain employment as best as can be done. This could be a matter of days, weeks or months.
69. This necessitates a level of trade off:
- (a) Additional operational flexibility can allow some businesses to hold off taking other steps;
 - (b) Employees may be willing, in the Pandemic, to trade off some employment benefits to stay in work and receive some income; and
 - (c) From here accessing paid leave (annual leave and long service leave) that is already provisioned for on the balance sheet will allow other businesses to reduce cash flow burdens, reduce operational activity while still maintaining employment with employees continuing to be paid.

Section 134 Considerations

70. The variation to the Award is necessary to achieve the MAO in the circumstances of the Pandemic.
71. The notion of the safety net must always be contextually calibrated.
72. What is “fair” is a ‘relativist’ consideration. What may be “fair” outside of the Pandemic and the Measures is different to what is “fair” in the context of the Pandemic and Measures.

73. “Relevant” is again a contextual consideration. What may have been relevant 6 months ago is no longer relevant now in the context of the Pandemic and Measures.

74. In terms of the matters the Commission has regard to in setting the safety net the following is now relevant:

- (a) “relative living standards and the needs of the low paid”; this must now be seen in the context of seeking to maintain employment rather than losing employment even if this means some employees chose to temporarily to maintain employment while accepting reduced employment benefits and take-home pay.
- (b) “the need to promote social inclusion through increased workforce participation”; this must be seen in the context of seeking to maintain employment rather than losing employment.
- (c) “the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; this must be seen in the context of allowing business to survive the Pandemic and the Measures so that they can operate to sustain what employment they can and be in an effective position to recover and maintain and then grow employment once the Pandemic passes.
- (d) “the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy; again this must be seen in the context of allowing business to survive the Pandemic and the Measures so that they can operate to sustain what employment they can and be in an effective position to recover and maintain and then grow employment once the Pandemic passes.