

Form F46 – 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](#).

The 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	Level 25 South Tower, 525 Collins Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	03 9640 4431	Fax number	03 9205 2055
Email address	Nick.ruskin@klgates.com		

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

Legal name of business	The following law firms: Corrs Chambers Westgarth; MinterEllison; Hall & Wilcox; Johnson Winter & Slattery; Arnold Bloch Leibler; Maddocks; Ashurst; Wotton + Kearney; Herbert Smith Freehills; Gilbert + Tobin; Allen & Overy; Gadens; and Clayton Utz.
Trading name of business	
ABN/ACN	
Contact person	Nick Ruskin, Partner

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

Yes – Please specify the assistance required

No

Does the 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 – Provide representative's details below

No

Applicant's representative



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

Name of person	Nick Ruskin		
Firm, organisation or company	K&L Gates		
Postal address	Level 25 South Tower, 525 Collins Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	03 9640 4431	Fax number	03 9205 2055
Email address	Nick.ruskin@klgates.com		

Is the Applicant'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

Legal Services Award 2020 [MA000116]

1.2 What industry is the employer in?

Legal services industry.

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?

Please see Annexure A - Draft Determination.

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.

Please see Annexure B - Outline of Submissions.

Attach additional pages, if necessary.

Signature



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	<i>Nick Ruskin</i>
Name	Nick Ruskin
Date	15 April 2020
Capacity/Position	Partner



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

ANNEXURE A

DETERMINATION

Fair Work Act 2009

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

(AM2020/___)

LEGAL SERVICES AWARD 2020

[\[MA000116\]](#)

JUSTICE ROSS, PRESIDENT

XXXXX

XXXXX

MELBOURNE, _____ 2020

Application to vary the Legal Services Award 2020.

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

1. By inserting Schedule I as follows:

Schedule I—Award Flexibility During the COVID-19 Pandemic

I.1 The provisions of Schedule I 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.

I.1.1 Schedule I operates from _____ 2020 until 30 June 2020. The period of operation can be extended on application to the Fair Work Commission.

I.2 During the operation of Schedule I, the following provisions apply:

I.2.1 Operational flexibility

(a) As directed by their employer, where necessary an employee will perform any duties that are within their skill and competency regardless of their classification under clause 12—Classifications and Schedule A—Classifications, provided that the duties are safe, and that the employee is licensed and qualified to perform them.

(b) An employer must not reduce an employee's pay if the employee is directed to perform duties in accordance with clause I.2.1.

I.2.2 Part-time employees working from home

Instead of clause 10.4 (Part-time employees), the minimum period of engagement applying to part-time employees who are working from home by agreement with the employer, is 2 hours.

I.2.3 Casual employees working from home

Instead of clause 11.3 (Casual employees), an employer must pay a casual employee who is working from home by agreement with the employer, a minimum payment of 2 hours' work for each day that the casual employee is engaged.

I.2.4 Ordinary hours of work for employees working from home

(a) Instead of clause 13.1(c)(i) (Ordinary hours of work and rostering), for employees working from home by agreement with the employer where an employee requests and the employer agrees, the spread of ordinary hours of work for day workers is between 6.00 am and 11.00 pm, Monday to Friday.

(b) Day workers are not shiftworkers for the purposes of any penalties, loadings or allowances under the award, including for the purposes of clause 21.

(c) The facilitative provision in clause 13.1(c)(ii) (Ordinary hours of work and rostering), which allows the spread of hours to be altered, will not operate for the employees referred to in clause I.2.4(a).

I.2.5 Agreed temporary reduction in ordinary hours

(a) 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 Schedule I is in operation.

(b) At least 75% of the full-time and part-time employees in the relevant workplace or section must approve any agreement to temporarily reduce ordinary hours.

(c) For the purposes of clause I.2.5(a), 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 agreed hours immediately prior to the implementation of the temporary reduction in ordinary hours.

(d) Where a reduction in hours takes effect under clause I.2.5(a), the employee's ordinary hourly rate will be maintained but the weekly wage will be reduced by the same proportion.

(e) Nothing in Schedule I prevents an employer and an individual employee agreeing in writing (including by electronic means) to reduce the employee's hours or to move the employee temporarily from full-time to part-time hours of work, with a commensurate reduction in the minimum weekly wage.

(f) If an employee's hours have been reduced in accordance with clause I.2.5(a):

(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.

(g) For the purposes of clause I.2.5(a), 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 Schedule I is in 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 Schedule I.

(h) For the purposes of clause I.2.5(a), the approval 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; and

(iii) The employer must notify the Fair Work Commission by emailing XXXX@fwc.gov.au that the employer proposes to conduct a vote under Schedule I. 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 Schedule I is in operation.

(iv) The vote shall not take place until at least 24 hours after the requirements of clause I.2.5(h)(i), (ii) and (iii) have been met.

I.2.6 Annual leave

(a) Employers and individual employees may agree to take 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.

(b) Instead of clauses 22.8, 22.9 and 22.10 (Annual leave), an employer may direct an employee to take any annual leave that has accrued, subject to considering the employee's personal circumstances, 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 2 weeks of accrued annual leave remaining.

I.2.7 Close down

(a) Instead of clause 22.7 (Annual leave), and subject to clause I.2.7(b), an employer may:

(i) require an employee to take annual leave as part of a close-down of its operations by giving at least one week's notice, 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.

(b) Clause I.2.7(a) does not permit an employer to require an employee to take leave for a period beyond the period of operation of Schedule I.

(c) Where an employee is placed on unpaid leave pursuant to clause I.2.7(a), the period of unpaid leave will count as service for the purposes of relevant award and NES entitlements.

2. By updating the table of contents and cross-references accordingly.

B. This determination comes into effect on _____ 2020. In accordance with s.165(3) of the Fair Work Act 2009 this determination does not take effect until the start of the first full pay period that starts on or after _____ 2020.

PRESIDENT

ANNEXURE B

IN THE FAIR WORK COMMISSION

OUTLINE OF SUBMISSIONS

INTRODUCTION

1. The following law firms have been in dialogue to reach a consent position on changes to the *Legal Services Award 2020* MA000116 (**Legal Services Award**) that can mitigate against the current impacts of COVID-19 on employees and employers covered by the Legal Services Award:
 - (a) Corrs Chambers Westgarth;
 - (b) MinterEllison;
 - (c) Hall & Wilcox;
 - (d) Johnson Winter & Slattery;
 - (e) Arnold Bloch Leibler;
 - (f) Maddocks;
 - (g) Ashurst;
 - (h) Wotton + Kearney;
 - (i) Herbert Smith Freehills;
 - (j) Gilbert + Tobin;
 - (k) Allen & Overy;
 - (l) Gadens; and
 - (m) Clayton Utz;together, the **Law Firms**.
2. The Law Firms submit the variation to the Legal Services Award is necessary to achieve the modern awards objective in the circumstances of the COVID-19 pandemic.

COVID-19 Pandemic

3. Coronavirus disease (**COVID-19**) is a new strain of coronavirus discovered in 2019. The infection causes respiratory symptoms and in more severe cases, can cause pneumonia, severe acute respiratory syndrome, kidney failure and even death.

4. In December 2019/January 2020 an outbreak of COVID-19 began in Wuhan, China. On 25 January 2020 Australia reported its first confirmed cases of COVID-19.¹
5. On 11 March 2020, the World Health Organisation (**WHO**) Director-General declared the COVID-19 outbreak as a pandemic.²
6. As at 14 April 2020 there have been more than 1.8 million confirmed cases of COVID-19 globally, and more than 117,000 deaths.³

COVID-19 in Australia and Government Response

7. As at 3pm on 14 April 2020 there have been 6,400 confirmed cases of COVID-19 in Australia. Of those cases, 61 people have died from COVID-19.⁴
8. The Australian Government has implemented a number of measures to protect the Australian community from the spread of COVID-19, including the following:
 - (a) a restriction on the opening of a number of facilities, including pubs, gyms and indoor sporting venues, entertainment venues, restaurants and cafes for dine in eating, religious gatherings, play centres, beauty salons, food courts and auction houses and open house inspections;⁵
 - (b) a mandatory 14 day self-isolation at designated facilities for all travellers arriving in Australia after 28 March 2020;⁶
 - (c) a limit to both indoor and outdoor gatherings to two persons only, with exceptions for people who live in the same household, funerals (to have a maximum of 10 people) and weddings (to have a maximum of 5 people);⁷ and

¹ World Health Organisation, *Novel Coronavirus (2019-nCoV) Situation Report - 5*, 25 January 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200125-sitrep-5-2019-ncov.pdf?sfvrsn=429b143d_8

² World Health Organisation, *Coronavirus disease 2019 (COVID-19) Situation Report - 51*, 11 March 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10

³ World Health Organisation, *Coronavirus disease 2019 (COVID-19) Situation Report - 85*, 14 April 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200414-sitrep-85-covid-19.pdf?sfvrsn=7b8629bb_4

⁴ Australian Government Department of Health, *Coronavirus (COVID-19) current situation and case numbers*, <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-current-situation-and-case-numbers>

⁵ Prime Minister of Australia, Media Statement 22 March 2020, <https://www.pm.gov.au/media/update-coronavirus-measures-220320>

⁶ Prime Minister of Australia, Media Statement 27 March 2020, <https://www.pm.gov.au/media/update-coronavirus-measures-270320>

⁷ Prime Minister of Australia, Media Statement 29 March 2020, <https://www.pm.gov.au/media/national-cabinet-statement>

- (d) a requirement to stay at home unless shopping for food and necessary supplies, for medical or health care needs, for exercise or for work and study if it can't be completed remotely.⁸
9. State and Territory Governments have given effect to these measures by issuing public health orders and directions under state Public Health Acts or equivalent legislative instruments. These restrictions, along with recommended guidelines for social distancing initiated by the Australian Government, have had significant consequences for employers and employees.
10. The Australian Government has further announced economic measures to be taken in response to the COVID-19 pandemic, including the following:
- (a) a \$17.6 billion economic stimulus package to support the economy, intended to support individuals and households, businesses and the flow of credit in the first half of 2020;⁹
 - (b) a moratorium on evictions over the next six months for commercial and residential tenancies in financial distress due to the impact of COVID-19;¹⁰
 - (c) a \$1.1 billion package to boost mental health services, domestic violence support, Medicare assistance for people at home and emergency food relief;¹¹ and
 - (d) provision of \$130 billion for JobKeeper payments, a subsidy to businesses intended to keep more Australians in jobs, commencing 30 March 2020.¹²
11. 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.
12. State governments have further announced adjustments to payroll tax and other measures to assist businesses.

COVID-19 Impact on the Australian Economy

13. The spread of COVID-19 globally has impacted Australian and international financial markets. In the week ending 20 March 2020, the S&P/ASX Index experienced the

⁸ Prime Minister of Australia, Media Statement 29 March 2020, <https://www.pm.gov.au/media/national-cabinet-statement>

⁹ Australian Government The Treasury, *Economic Response to the Coronavirus*, <https://treasury.gov.au/coronavirus>

¹⁰ Prime Minister of Australia, Media Statement 29 March 2020, <https://www.pm.gov.au/media/national-cabinet-statement>

¹¹ Prime Minister's Statement, 29 March 2020, <https://www.health.gov.au/news/1-1-billion-to-support-more-mental-health-medicare-and-domestic-violence-services>

¹² Prime Minister of Australia, Media Statement, 30 March 2020, <https://www.health.gov.au/news/jobkeeper-payment>

second largest fall on record, only being surpassed by the fall during the peak of the Global Financial Crisis.¹³

14. The risks and potential impact of the COVID-19 pandemic on the Australian economy continue to increase and there will be a major impact on economic growth in 2020, with Australia's economic growth in 2020 predicted to be the worst since the Great Depression.¹⁴ It has been reported that analysts at investment bank UBS predict unemployment in Australia will increase to as high as 8%.¹⁵
15. The Reserve Bank of Australia (**RBA**) have announced quantitative easing measures to stem the deterioration of trading liquidity and the cash rate has been lowered to 0.25%.¹⁶

Section 157 of the Fair Work Act

16. This Application to vary the Legal Services Award is made pursuant to section 157 of the *Fair Work Act 2009* (Cth) (**the Act**). Section 157 empowers the Fair Work Commission (**Commission**) to make a determination varying a modern award if necessary to achieve the modern awards objective.
17. The modern awards objective is set out in section 134 of the Act. The modern awards objective is directed at ensuring awards, together with the National Employment Standards (**NES**), provide a fair and relevant minimum safety net of terms and conditions.

Summary of Variation Sought

18. This Application seeks to vary the Legal Services Award given the unprecedented circumstances of the COVID-19 pandemic.
19. This Application seeks to add a new Schedule, *Schedule I - Award Flexibility during the COVID-19 pandemic*, to the Legal Services Award (**proposed variation**). The proposed variation seeks to:
 - (a) ensure employees perform the broadest ambit of work provided that it is safe and they hold any necessary mandatory qualifications without reduction of pay;

¹³ Sydney Morning Herald, *ASX posts largest weekly fall since GFC*, 20 March 2020 <https://www.smh.com.au/business/markets/asx-posts-largest-weekly-fall-since-gfc-20200320-p54cd0.html>

¹⁴ The Australia, *Coronavirus prediction: Australian Economic growth to be worst since great depression*, 20 March 2020 <https://www.theaustralian.com.au/business/economics/coronavirus-prediction-australian-economic-growth-to-be-worst-since-great-depression/news-story/7bb9ddcf4da09ef38539e3e8d45f050c>

¹⁵ The Guardian, *'They're going to go under': Australia's coronavirus-hit restaurants, bars and caterers seek bailout*, 18 March 2020 <https://www.theguardian.com/world/2020/mar/18/theyre-going-to-go-under-australias-coronavirus-hit-restaurants-bars-and-caterers-seek-bailout>

¹⁶ Reserve Bank of Australia, *Monetary Policy Decision 19 March 2020*, <https://www.rba.gov.au/media-releases/2020/mr-20-06.html>

- (b) provide for increased operational flexibility by varying the minimum engagement for a part-time and casual employees working from home and the spread of ordinary hours of work for day workers working from home;
 - (c) allow permanent employees to agree to reduce their working hours to not fewer than 75% of current hours (for the workplace or a section of the workplace) without displacing the common right for an employer and employee to individually agree to change hours of work;
 - (d) subject to considering the employees personal circumstances and giving one weeks' notice, direct the taking of annual leave; and
 - (e) alter the notice period for a close-down and allowing a general right to close down the business provided that employees must access any accrued annual leave.
20. It is proposed the new schedule will be temporary and will operate until 30 June 2020. The period of operation can be extended on application if necessary.

Merits of the Application

21. The Law firms submit that the proposed variation is necessary to achieve the modern awards objective of a fair and relevant minimum safety net of terms and conditions. Fairness in this context is to be assessed from the perspective of the employees and employers covered by the modern award in question.¹⁷ The Law Firms note that what is 'necessary' to achieve fairness in the context of the COVID-19 pandemic may be different to what is required to achieve fairness outside of this context.
22. As discussed above, the COVID-19 pandemic has had a material impact on all parts of the globe, including Australia. The Australian Government (supported by State and Territory Governments) has implemented a series of measures to slow the progress of the pandemic in Australian and to cushion the economic impact.
23. These measures have forced many employees to self-isolate, withdraw from the working environment, curtail from normal social activities, cease operating business or adopt unusual working arrangements.
24. The impact on employers and employees is significant. The enhanced social distancing measures introduced by the Australian Government has required employees in the legal services industry to work from home as far as practicable and most offices are now empty or adopting new work patterns to reduce the level of risk to employees.
25. Casual employees are facing reduced hours or no work at all. Permanent employees are facing necessary flexibility to sustain ongoing employment against increasing commercial pressure for employers to reduce costs. Businesses are required to balance decreased cash flow against maintaining employment.
26. A trade-off is required to maintain business while trying to maintain employment. Employees may be willing, throughout the COVID-19 pandemic, to trade off particular employment benefits to maintain their employment and receive some income.

¹⁷ [2018] FWCFB 3500 at [21]-[24]

Additional operational flexibility may also allow some businesses to hold off taking other, more drastic steps.

27. The nature of revenue generation in the legal services industry results in significant delays between a business providing services and receiving payment for those services. Employers in the industry are required to continue to pay employees prior to being aware if they will receive revenue for their services. This is in contrast to other industries where businesses are able to make more timely assessments of the impact of the COVID-19 pandemic on their revenue and consequently access Government subsidies and allowances to preserve employees' roles.
28. In this context, the legal services industry requires mechanisms that provide for immediate flexibility to promptly minimise labour costs and assist cash flow. This will allow businesses in the industry to retain as many employees in employment as possible and preserve the viability of businesses.

Section 134 Considerations

29. Section 134 lists those factors the Commission must take into account in determining whether the modern awards objective has been met. Not all of the matters identified in section 134 will necessarily be relevant in the context of a particular proposal to vary a modern award.¹⁸
30. The considerations in section 134(1)(b), (da), (e) and (g) are not relevant.

Section 134(1)(a): relative living standards and the needs of the low paid

31. The proposed variation may result in low paid employees working less hours and therefore receiving less pay and being less able to meet their needs. However, the retention of as many employees as possible in employment is a priority, even if some employees are required to accept reduced benefits and pay.
32. The proposed variation attempts to mitigate the impact of reduced hours by:
 - (a) maintaining accruals;
 - (b) all entitlements on termination of employment are based on an employee's ordinary hours prior to the commencement of the variation; and
 - (c) by facilitating engagements in secondary employment, training, professional development or study.

Section 134(1)(c): the need to promote social inclusion through increased workforce participation

33. The proposed variation seeks to facilitate the retention of as many employees in employment as possible by allowing for operational flexibility appropriate in the circumstances of the COVID-19 pandemic.

Section 134(1)(d) and (f): the need to promote flexible modern work practices and the efficient and productive performance of work and the likely impact of any exercise of modern

¹⁸ [2020] FWCFB 1690 at [36]

award powers on business, including on productivity, employment costs and the regulatory burden

34. This consideration must be viewed in the context of assisting businesses to survive the COVID-19 pandemic. The proposed variation will promote flexibility and the productive performance of work so that business can sustain what employment they can throughout the COVID-19 pandemic and be in a position to recover and expand employment opportunities once the COVID-19 pandemic passes.

Section 134(1)(h): the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

35. By assisting to maintain employment and the viability of businesses in the legal services industry, the proposed variation will contribute to the performance of the economy and the achievement of the objective in section 134(1)(h).

Additional Considerations

Section 93(3)

36. Subsections 93(3) and (4) of the Act are relevant to the proposed variation regarding annual leave and close down flexibilities. Section 93 is part of the NES and provides that a modern award may include terms allowing an employee to be required to take paid annual leave only if the requirement is reasonable.
37. The Law Firms submit the terms included in the proposed variation regarding the direction of employees to take annual leave are 'reasonable' within the meaning of section 93(3). The terms are of limited operation to address the unique circumstances of the COVID-19 pandemic. Employers must give at least 1 weeks' notice of such a direction and in issuing the direction the employer is required to consider an employee's personal circumstances.

Section 55(4)

38. Section 55(4) of the Act allows for modern awards to include terms ancillary or incidental to the operation of an entitlement of an employee under the NES, to the extent that the effect of those terms is not detrimental to an employee, when compared to the NES.
39. The Law Firms submit that the proposed clause I.2.6(a) providing for an ability to take twice as much annual leave at a proportionally reduced rate by agreement is an ancillary or incidental term permitted under section 55(4). The statutory notes to section 55(4) provide an example of a term providing for annual leave to be taken at half pay for twice as long as a term permitted under this section.

Section 139(1)(j)

40. Section 139(1)(j) of the Act allows modern awards to include terms about procedures for consultation, representation and dispute settlement.
41. The Law Firms submit that the proposed clause I.2.5(h) providing for a method for obtaining approval from employees to reduce working hours is permitted under section 138(1)(j) as it is a term about 'procedures for consultation, representation and dispute settlement'.

Previous Determination to vary the *Clerks - Private Sector Award 2010*

42. The Commission has made determination to vary the following modern awards in response to the COVID-19 pandemic:
 - (a) On 25 March 2020 a Full Bench of the Commission granted an application to vary the *Hospitality Industry (General) Award 2010*.¹⁹
 - (b) On 28 March 2020 a Full Bench of the Commission granted an application to vary the *Clerks - Private Sector Award 2020 (Clerks Award)*.²⁰
 - (c) On 31 March 2020 the Full Bench of the Commission granted an application to vary the *Restaurant Industry Award 2010*.²¹
43. The Law Firms note the similarities of the Legal Services Award and the Clerks Award. The Commission has previously proposed combining the awards due to the uniformity of the provisions.²² The Law Firms further note the similar impact of the COVID-19 pandemic on employees employed in the private sector and the legal services industry.
44. The provisions contained in the Draft Determination at Annexure A mirror the variation made to the Clerks Award agreed to by the Commission on 28 March 2020.
45. The decision of the Commission to vary the Clerks Award concluded that the measures encompassed in the variation to the Clerks Award strike an appropriate balance between the provision of additional flexibility and treating affected employees fairly.²³
46. The Law Firms rely heavily on the reasoning in the Commission's decision to vary the Clerks Award in making this Application and submit that the identical nature of the provisions contained in the Draft Determination at Annexure A provide assurance that the provisions are necessary to achieve the modern awards objective.

¹⁹ [2020] FWCFB 1574

²⁰ [2020] FWCFB 1690

²¹ [2020] FWCFB 1741

²² [2017] FWCFB 5536; Deputy President Clancy, Report to the Full Bench, 3 June 2016

²³ [2020] FWCFB 1690 at [98].