

Attachment B

Grounds relied upon and submission in support of the Application

1. The Australian Industry Group (**Ai Group**) and the Australian Chamber of Commerce and Industry (**ACCI**) seek a variation to the *Clerks – Private Sector Award 2020* (**Award**) in the terms set out at Attachment A to our application.
2. If granted, the proposed variation would result in the extension of the period of operation of Schedule I—Award Flexibility During the COVID-19 Pandemic, by three months, to 30 September 2020.
3. The application is made because of the ongoing challenges facing employers due to the COVID-19 pandemic (**Pandemic**).
4. The terms of the Schedule expressly contemplate that the period of operation may be extended by the Commission:
 - 1.1.1 Schedule I operates from 28 March 2020 until 30 June 2020. The period of operation can be extended on application to the Fair Work Commission.
5. Ai Group and ACCI have endeavoured to have discussions and reach agreement with the Australian Council of Trade Unions (**ACTU**) and the Australian Services Union (**ASU**) on the extension of the Schedule, but the union parties have advised that they are not prepared to extend the operation of any of the provisions in the Schedule.
6. The ACTU and ASU's position is disappointing and inexplicable given the level of joint cooperation and commitment that led to the Schedule being developed and jointly proposed to the Commission.
7. Notwithstanding the ACTU and ASU's refusal to have discussions about, or agree to, any extension in the period of operation of the Schedule, an extension is necessary, including being necessary to ensure that the Award continues to achieve the modern awards objective.

The Pandemic, its impact on work performed under the Award, and the necessity of the extended operation of the Schedule

8. An [Information Note](#) published by the Commission contains extensive detail about various measures that have been taken by State and Federal Governments for the purposes of endeavouring to slow the spread of the Pandemic. The Information Note was most recently updated on 16 June 2020.

Working from home

9. A very large number of clerical employees are currently working from home. Clauses 1.2.2, 1.2.3 and 1.2.4 provide essential flexibility to employees who are working from home, and to their employers.
10. In Victoria, the State Government is requiring employers to work from home if this is possible. The relevant advice on the [Business Victoria website](#) is:

Offices and non-public indoor work settings

If you and your staff can work from home, you must work from home.

Organisations and employers who are responsible for a workplace should take these actions now to reduce the risk of transmission of coronavirus (COVID-19):

- if your staff can work from home, they must work from home
- if your staff can't work from home, you should encourage flexible working arrangements, including off-peak travel
- if your employees are unwell they must stay home
- consider if work-related travel by your staff within Victoria is necessary and delay where possible
- plan for increased levels of staff absences
- plan for what to do if staff arrive unwell at work (e.g. identify an isolation room or separated area)
- display education materials can be downloaded and printed from the DHHS website
- keep staff informed of the actions you are taking.
- consult with Health and Safety Representatives (HSRs) and keep staff informed of the actions you are taking.

11. In a very large number of cases, employers are allowing their clerical employees to work from home at the current time, even where it not a Government requirement to do so. The reasons why employers are doing this include: protecting the health of employees, accommodating the concerns of employees about travelling to workplaces on public transport, accommodating the concerns of employees about being exposed to the virus in workplaces, and accommodating employees' need to care for children.
12. In an article by journalist Ewin Hannan in *The Australian* on 4 May 2020 entitled *Coronavirus: Quick return to work risks disaster, say unions*, ACTU Secretary, Sally McManus is quoted as saying:

ACTU secretary Sally McManus said workers wanted to get back to normal as soon as possible, but lockdown measures keeping the virus under control "should stay in place until the experts believe it's safe to go back to work and all appropriate work health and safety measures were in place".

"Before we can get back into workplaces, we need to make sure that those workplaces are safe, that all necessary distancing protocols are in place and that all workers have the rights in those workplace that they need to stay safe," she said. "This includes leave entitlements that will allow all workers to get tested and self-isolate if required."

13. The ACTU's refusal to agree to an extension in Schedule I is inconsistent with their public statements that workers should not be required to return to workplaces prematurely.

Reduced hours

14. A very large number of clerical employees are currently working reduced hours and, in many cases, are likely to continue to do so for several months. Clause I.2.5 provides essential flexibility in this area.

Other provisions in Schedule I

15. In addition, it is important that the provisions in Schedule I dealing with operational flexibility (clause I.2.1), annual leave (clause I.2.6) and close down (clause I.2.7) continue to operate until at least 30 September 2020.

The Relevant Legislative Requirements

16. Ai Group and ACCI's application is made pursuant to s.157 of the *Fair Work Act 2009 (Act)*.

17. Section 157 of the Act empowers the Commission to vary modern awards if necessary to achieve the modern awards objective.
18. Ai Group and ACCI rely upon the conclusions reached by the Commission in its decision of 28 March 2020 ([\[2020\] FWCFB 1690](#)) with respect to why the provisions of the Schedule are consistent with the modern awards objective and necessary to achieve the modern awards objective.
19. At the hearing on Saturday 28 March, Ai Group, ACCI, the ACTU and the ASU were all urging the Commission to insert the Schedule in the Award. The transcript records that Mr Rizzo for the ASU said:

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We support the application, your Honour, and what we seek to achieve is flexibility for both employers and employees and the main aim, of course, is to save jobs and to make sure that hours and jobs are spread as much as possible and to keep people in work as much as possible.

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Your Honour and the Full Bench, the ASU (indistinct) fully support this. We are responding to extraordinary times and the other reason, of course, why we support it is - the important point - is while it is for a short term, this does expire on 30 June 2020 and so that is a comfort to us and we will see what happens are that particular date, but the ASU commends the variations to the Full Bench and encourages it to (indistinct). If your Honour, please.

20. Consistent with the ASU's submissions, the aim of the Schedule is still to "*make sure that hours and jobs are spread as much as possible and to keep people in work as much as possible*".
21. With regard to the ASU's submission that "*we will see what happens on that particular date*" (i.e. 30 June). The picture is now clear – there is a clear need for the Schedule to be extended until at least 30 September 2020.
22. The Pandemic is continuing and its impacts upon businesses, employees and workplaces are very significant.