

# DRAFT DETERMINATION

*Fair Work Act 2009*

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



**The Australian Industry Group**

**Australian Chamber of Commerce and Industry;**

(AM2020/XX)

**CLERKS—PRIVATE SECTOR AWARD 2020**

[MA000002]

Clerical industry

JUSTICE ROSS, PRESIDENT

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MELBOURNE, XX JUNE 2020

*Application to vary the Clerks—Private Sector Award 2020.*

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

1. By deleting the words “until 30 June 2020” in clause I.1.1 in Schedule I – Award Flexibility During the COVID-19 Pandemic, and replacing them with the words “until 30 September 2020”.
2. By adding a new clause I.1.2 in Schedule I - Flexibility During the COVID-19 Pandemic as follows:

**I.1.2** Any direction or request given by an employer under Schedule I must be given in writing and does not apply to the employee if the direction is unreasonable in all of the circumstances.
3. By deleting clause I.2.1 – Operational flexibility, clause I.2.2 – Part-time employees working from home and clause I.2.3 – Casual employees working from home.
4. By renumbering clause I.2.4 – Ordinary hours of work for employees working from home, as clause I.2.1, and changing the cross-reference “I.2.5(e)” to “I.2.1(a)”.
5. By renumbering clause I.2.5 – Agreed temporary reduction in ordinary hours, as clause I.2.2, with consequential renumbering of the cross-references in the clause.
6. By adding a new clause I.2.2(h) as follows:
  - (h) This clause only applies to employers who implemented a temporary reduction in ordinary hours under Schedule I in this Award before 30 June 2020.

7. By deleting clause I.2.6 – Annual leave, and adding the following clause I.2.3 – Annual leave:

**I.2.3 Annual leave**

- (a) Subject to clause I.2.3(f) and despite clauses 32.6, 32.7 and 32.8 (Annual leave), an employer may, subject to considering an employee’s personal circumstances, request an employee to take paid annual leave, provided that the request does not result in the employee retaining a balance of less than 2 weeks annual leave after the leave is taken. Such a request must be made a minimum of 72 hours before the date on which the annual leave is to commence.
- (b) An employee must consider and may not unreasonably refuse a request to take annual leave made pursuant to clause I.2.3.
- (c) Clauses I.2.3(a) and (b) do not prevent an employer and an employee agreeing to the employee taking annual leave at any time.
- (d) 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.
- (e) The period of annual leave must commence before 30 September 2020 but may end after this date.
- (f) An employer can only request that an employee take annual leave pursuant to this clause if the request is made for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19 and to assist the employer to avoid or minimise the loss of employment.
- (g) An employee is not required to take leave under clause I.2.3 unless the employee is advised in writing that the employer consents to a dispute about whether the employer’s request is reasonable in all the circumstances being settled by the Fair Work Commission through arbitration in accordance with clause 40.5— Dispute Resolution and section 739(4) of the Act.

8. By deleting clause I.2.7 – Close-down.

B. This determination comes into effect on 30 June 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 30 June 2020.

PRESIDENT