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To:
Subject: FWC Update – Summary of recent decisions to vary Schedule X – Additional measures during the COVID-19 pandemic

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Fair Work Commission
Australia's national workplace relations tribunal

Summary of recent decisions to vary Schedule X – Additional measures during the COVID-19 pandemic

Applications to vary Schedule X

On 30 June 2020, a Full Bench issued a decision in transcript and made a **determination to extend the operation of Schedule X** in 9 health sector awards until 31 July 2021.

On 29 and 30 June 2020, **applications to extend the operation of Schedule X** were received for the following awards:

- Airline Operations – Ground Staff Award 2020 (AM2020/57)
- Airport Employees Award 2020 (AM2020/53)
- Alpine Resorts Award 2020 (AM2020/80)
- Aluminium Industry Award 2020 (AM2020/80)
- Amusement, Events and Recreation Award 2020 (AM2020/80)
- Animal Care and Veterinary Services Award 2020 (AM2020/55 and AM2020/61)
- Aquaculture Industry Award 2020 (AM2020/80)
- Architects Award 2020 (AM2020/54)
- Asphalt Industry Award 2020 (AM2020/80)
- Banking, Finance and Insurance Industry Award 2020 (AM2020/84);
- Broadcasting, Recorded Entertainment and Cinemas Award 2010 (AM2020/79)
- Business Equipment Award 2020 (AM2020/57)
- Car Parking Award 2020 (AM2020/63)
- Cement, Lime and Quarrying Award 2020 (AM2020/80)
- Cemetery Industry Award 2020 (AM2020/80)
- Children's Services Award 2010 (AM2020/65)
- Cleaning Services Award 2020 (AM2020/67)
- Commercial Sales Award 2020 (AM2020/68)
- Contract Call Centres Award 2020 (AM2020/57)
- Corrections and Detentions (Private Sector) Award 2020 (AM2020/69 and AM2020/80)
- Cotton Ginning Award 2020 (AM2020/80)

- Dry Cleaning and Laundry Industry Award 2020 (AM2020/81)
- Educational Services (Post-Secondary Education) Award 2020 (AM2020/82)
- Electrical Power Industry Award (AM2020/58)
- Fitness Industry Award 2010 (AM2020/80)
- Food, Beverage and Tobacco Manufacturing 2010 (AM2020/70)
- Funeral Industry Award 2010 (AM2020/71)
- Gardening and Landscaping Services Award 2020 (AM2020/80)
- Higher Education Industry-General Staff-Award 2020 (AM2020/57)
- Horse and Greyhound Training Award 2020 (AM2020/80)
- Horticulture Award 2010 (AM2020/80)
- Hospitality Industry (General) Award 2020 (AM2020/72)
- Journalists Published Media Award 2020 (AM2020/79)
- Labour Market Assistance Industry Award 2020 (AM2020/57)
- Legal Services Award 2020 (AM2020/57)
- Local Government Industry Award 2020 (AM2020/56 and AM2020/57)
- Meat Industry Award 2020 (AM2020/80)
- Miscellaneous Award 2020 (AM2020/73)
- Nursery Award 2020 (AM2020/80)
- Pastoral Award 2010 (AM2020/80)
- Pest Control Industry Award 2020 (AM2020/80)
- Pharmaceutical Industry Award 2010 (AM2020/80)
- Poultry Processing Award 2020 (AM2020/80)
- Premixed Concrete Award 2020 (AM2020/80)
- Professional Diving Industry (Recreational) Award 2020 (AM2020/80)
- Professional Employees Award 2020 (AM2020/59)
- Racing Clubs Events Award 2010 (AM2020/80)
- Racing Industry Ground Maintenance Award 2020 (AM2020/80)
- Rail Industry Award 2020 (AM2020/57)
- Registered and Licensed Clubs Award 2010 (AM2020/75)
- Restaurant Industry Award 2020 (AM2020/74)
- Salt Industry Award 2010 (AM2020/80)
- Seafood Processing Award 2020 (AM2020/80)
- Security Services Industry Award 2020 (AM2020/76)
- Silviculture Award 2020 (AM2020/80)
- State Government Agencies Award 2020 (AM2020/60)
- Sugar Industry Award 2020 (AM2020/80)
- Textile, Clothing, Footwear and Associated Industries Award 2010 (AM2020/81)
- Timber Industry Award 2010 (AM2020/81)
- Vehicle Repair, Retail and Services Award 2020 (AM2020/83)
- Waste Management Award 2020 (AM2020/80)
- Water Industry Award 2020 (AM2020/77, AM2020/64 and AM2020/57)
- Wine Industry Award 2010 (AM2020/78) and
- Wool Storage, Sampling and Testing Award 2010 (AM2020/80).

On 1 July 2020, the Commission issued a [decision \(\[2020\] FWCFB 3444\)](#) outlining its **provisional** view that the operative date of Schedule X of each of the awards above (save for the **Electrical Power Industry Award 2020**) should be extended to 30 September 2020. It is also the Commission's **provisional** view that Schedule X should be inserted in the **Electrical Power Industry Award 2020** and that it should operate until 30 September 2020.

Submissions opposing any of these applications and the Commission's provisional views were due by 2pm on Thursday, 2 July 2020. No submissions were filed opposing the extension of Schedule X.

A further [decision \(\[2020\] FWCFB 3490\)](#) was issued on 2 July 2020 confirming the provisional view and extending the operation of Schedule X in each of the relevant awards.

A submission was filed opposing the insertion of Schedule X into the **Electrical Power Industry Award 2020** and a hearing was held at 10am today, Friday, 3 July 2020.

Hospitality Industry (General) Award 2020

Hospitality Industry (General) Award 2020 (AM2020/35)

On 29 June 2020, a Full Bench [granted an application \(\[2020\] FWCFB 3405\)](#) made by the Australian Hotels Association (AHA) to vary and extend the operation of Schedule J – Award Flexibility During the COVID-19 Pandemic in the **Hospitality Industry (General) Award 2020 until 27 September 2020**.

The modified Schedule J maintains some of the flexibilities available under the existing schedule and includes greater protections for employees. The main differences between the existing and modified schedules are:

- The modified schedule excludes employees employed by an employer that qualifies for the JobKeeper scheme.
- The modified schedule requires the employer to advise the employee in writing that the employer consents to arbitration.
- The modified schedule provides that a direction in relation to hours of work can only be given in certain circumstances (because the employee cannot be usefully employed for the employee's normal days or hours during the period of the direction because of changes to business attributable to due to COVID-19 or government initiatives to slow the transmission of COVID-19.) The direction must be given in writing and be reasonable in all the circumstances.
- The modified schedule includes some additional safeguards around annual leave.

Restaurant Industry Award 2020

Restaurant Industry Award 2020 (AM2020/36)

On 29 June 2020, a Full Bench [granted an application \(\[2020\] FWCFB 3401\)](#) made by Restaurant & Catering Industrial to vary and extend the operation of Schedule I – Award Flexibility During the COVID-19 Pandemic in the **Restaurant Industry Award 2020 until 27 September 2020**.

The modified Schedule I maintains some of the flexibilities available under the existing schedule and includes greater protections for employees. The main differences between the existing and modified schedules are:

- The modified schedule excludes employees employed by an employer that qualifies for the JobKeeper scheme.
- The modified schedule requires the employer to advise the employee in writing that the employer consents to arbitration.
- The modified schedule provides that a direction in relation to hours of work can only be given in certain circumstances (because the employee cannot be usefully employed due to COVID, the direction is reasonable and given in writing).
- The modified schedule includes some additional safeguards around annual leave.
- The modified schedules does not include the close down provisions at clause I.2.4 of the existing schedule.

Vehicle Repair, Services and Retail Award 2020

Vehicle Repair, Services and Retail Award 2020 (AM2020/37)

On 30 June 2020, a Full Bench **granted an application ([2020] FWCFB 3416)** made by the Victorian Automobile Chamber of Commerce, the Motor Trade Association of South Australia Incorporated, the Motor Traders Association of New South Wales and the Motor Trades Association of Queensland Industrial Organisation of Employers to vary and extend the operation of Schedule I – Award Flexibility During the COVID-19 Pandemic in the Vehicle Repair, Services and Retail Award 2020 until 31 July 2020.

The modified Schedule I maintains some of the flexibilities available under the existing schedule for a limited period, until 31 July 2020. It does not maintain the operation of clause 1.2 (Classifications and Duties) or clause 1.5 (Close-down), due to the low utilisation of these clauses by employers.

Clerks – Private Sector Award 2020

Clerks – Private Sector Award 2020 (AM2020/30)

On 30 June 2020, a Full Bench issued a decision in transcript and made a **determination to vary and extend** the operation of Schedule I – Award Flexibility During the COVID-19 Pandemic in the **Clerks – Private Sector Award 2010 until 30 September 2020**.

The modified Schedule I maintains some of the flexibilities available under the existing schedule and includes greater protections for employees. The main differences between the existing and modified schedules are:

- The modified schedule requires that any direction or request given by the employer must be given in writing and does not apply to the employee if the direction is unreasonable in all of the circumstances.
- The modified schedule requires the employer to advise the employee in writing that the employer consents to arbitration.
- The modified schedule inserts new clauses 1.2.2(i) to (k) relating to temporary reduction in ordinary hours.
- The modified schedule removes clause 1.2.6 relating to Annual leave and inserts a new clause 1.2.3.
- The modified schedules does not include provisions at clause 1.2.1, 1.2.2 and 1.2.3 of the existing schedule.
- The modified schedules does not include the close down provisions at clause 1.2.7 of the existing schedule.

Find out more

Visit the **Coronavirus (COVID-19) updates & advice** page on our website for information about specific application types and any changes to our operations in response to COVID-19.

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