



## President's statement

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# The Fair Work Commission's Coronavirus (COVID-19) update – Draft Award Flexibility Schedule

Justice Ross, President

Melbourne, 31 August 2020

### Introduction

- [1] On [31 March 2020](#), [8 May 2020](#) and [7 August 2020](#) the Fair Work Commission (Commission) released statements setting out the steps we have taken to continue to deliver services to the community. This statement provides an update on our actions and operations and includes a draft Award Flexibility schedule, prepared by Commission staff to promote discussion among industrial parties about appropriate flexibility arrangements to assist industries impacted by the pandemic.
- [2] As at 27 August 2020, Australia had a total of 25 322 cases of COVID-19, of which 20 361 people have recovered and 572 have died. In response to a substantial rise in new cases in Victoria, and to a lesser extent New South Wales, state governments have re-imposed restrictions on movement and activities. Detailed information is provided in the Commission's [COVID-19 situation update information note](#) and the [Government responses to the COVID-19 pandemic information note](#) (updated 28 August 2020).
- [3] In its August 2020 Statement on Monetary Policy the Reserve Bank of Australia (RBA) observed that the COVID-19 pandemic represents 'the largest shock to the global economy in many decades' and that 'labour markets have been severely disrupted'. Given the high degree of uncertainty for the outlook the RBA presents a number of scenarios with different assumptions about the outbreak and restrictions, and their effects on household and business confidence. The RBA makes the following observations about the outlook in its 'baseline scenario':

'GDP grows modestly over the second half of 2020... Growth is driven by household consumption, as activity in much of the rest of the economy continues to contract. Household income is expected to decline over coming quarters as government support is tapered... Employment is expected to decline further over the second half of the year, as the job losses resulting from the heightened restrictions in Victoria as well as the tapering of the JobKeeper program more than offset the continued recovery in jobs elsewhere in the economy. The unemployment rate is expected to continue to increase over the second half of 2020, peaking at almost 10 per cent by the end of the year...

The profile for GDP over the second half of the forecast period is broadly similar to the

baseline scenario presented in the May *Statement*... However, the pace of recovery in the unemployment rate is now expected to be more gradual.<sup>1</sup>

- [4] A key risk to the economic outlook is further outbreaks of the COVID-19 virus and the associated restrictions on activity.<sup>2</sup> In July 2020, Victoria experienced an increase in cases of COVID-19. To limit the spread of COVID-19 in the community, stage 4 restrictions were implemented in metropolitan Melbourne and stage 3 restrictions were implemented in regional Victoria from 2 August 2020. The outbreak in Victoria has led to a reduction in the RBA's forecast for economic growth, with the RBA Governor anticipating a recovery that will be 'uneven and bumpy' and longer than expected.<sup>3</sup>
- [5] The Australian Bureau of Statistics' (ABS) *Weekly Payroll Jobs and Wages in Australia* publication contains information on businesses with Single Touch Payroll software obtained from the ATO to provide estimates of the economic impact of COVID-19 on employees and the labour market. The data capture the number of payroll jobs, represented by a relationship between an employee and their employing enterprise, and the wages paid to these jobs.<sup>4</sup>
- [6] The data are available from early 2020, with the week ending 14 March set as a benchmark as it was the time Australia recorded its 100<sup>th</sup> case of COVID-19. The latest data are for the week ending 8 August. The data cover the following government responses to the COVID-19 pandemic:
- 22 March: Prime Minister announces Stage 2 lockdown changes
  - 30 March: Prime Minister announces JobKeeper program
  - 8 May: Initial payroll deadline for the JobKeeper program
  - 1 July: Stay at Home restrictions commence for selected Melbourne postcodes
  - 8 July: Stay at Home restrictions commence for metropolitan Melbourne and Mitchell Shire
  - 12 July: Early Childhood Education and Care Relief Package ceased
  - 5 August: Stage 4 restrictions enforced in metropolitan Melbourne and Stage 3 restrictions in regional Victoria commence
- [7] Between the week ending 14 March and the week ending 8 August 2020, the number of employee jobs declined by 4.9 per cent and total wages declined by 6.2 per cent. At its lowest point, in the week ending 18 April, employee jobs had fallen by 8.5 per cent. While the initial impact was larger on female jobs to 18

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<sup>1</sup> RBA [Statement on Monetary Policy](#) August 2020 at pp90-91.

<sup>2</sup> RBA Statement on Monetary Policy August 2020 at p.89

<sup>3</sup> Lowe P (2020), [Opening Statement to the House of Representatives Standing Committee on Economics](#), 14 August

<sup>4</sup> ABS, [Weekly Payroll Jobs and Wages in Australia, Week ending 8 August 2020](#), Catalogue No. 6160.0.55.001.

April, job losses were higher among males over the period from 14 March to 8 August. Younger (20–29 years) and older (70+ years) age groups continue to have the largest decline in jobs, while those aged under 20 years have experienced the smallest decline in jobs since 14 March and were the only age group with growth in total wages.

- [8] The Annual Wage Review 2019–20 decision grouped the industries into three clusters based on their labour market outcomes between 14 March and 30 May.<sup>5</sup> Accommodation and food services and Arts and recreation services suffered the greatest job losses and decline in wages and formed the ‘upper cluster’. Electricity, gas, water and waste services and Finance and insurance services formed the ‘lower cluster’ as they were the only industries with positive jobs growth. The remaining industries comprised the ‘central cluster’.
- [9] In the latest data to the week ending 8 August, these industry clusters remained broadly the same, save that Public administration and safety shifted from the central to the lower cluster as it has had positive jobs growth since 14 March. There was a recovery in jobs and wages across most industries, although Accommodation and food services and Arts and recreation services remained the two most adversely affected industries. More detailed data is contained in the [information note on payroll jobs and wages](#) (published on 31 August 2020).

### **JobKeeper dispute jurisdiction**

- [10] The Australian Government has introduced several measures, including the JobKeeper program, to support employers and employees and Parliament has enacted changes to the *Fair Work Act 2009* (Cth) (Fair Work Act) that allow an employer to temporarily change an employees’ work conditions to help the employer deal with the impacts of COVID-19. An employer can give an employee a JobKeeper enabling direction or make an agreement with the employee. The Commission has the power to deal with any disputes about these directions and agreements.
- [11] The *Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Bill 2020* seeks to extend the operation of the scheme until late March 2021. The Amendment Bill modifies the criteria for JobKeeper payments and amends Part 6-4C of the Fair Work Act (which deals with JobKeeper enabling directions) in a number of ways. The Commission will publish an Information Note shortly after the passage of the Amendment Bill and update the JobKeeper Benchbook.
- [12] Since the start of the JobKeeper dispute jurisdiction on 9 April 2020, and as at 27 August 2020, the Commission had received 682 applications. Overall, 30% of all finalised applications have *not* raised jurisdictional issues. However, the proportion of applications within jurisdiction is increasing. Between June and August, approximately 60% of applications lodged have not raised early jurisdictional issues.

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<sup>5</sup> [2020] FWCFB 3500 at [42]–[47].

[13] Of the applications that do not raise any jurisdictional issues (noting that some applications relate to more than one of the subjects below):

- 41% relate to a dispute about a JobKeeper enabling stand down direction (s.789DC)
- 36% relate to a dispute about a request to make an agreement about change to an employee's days or times of work (s.789GG)
- 34% relate to a dispute about a request to make an agreement to take annual leave (s.789GJ)
- 27% relate to wage condition, minimum payment guarantee or hourly rate of pay guarantee (ss.789GD, 789GDA, 789GDB)
- 13% relate to a dispute about a direction about duties of work (s.789GE)
- 10% relate to a dispute about a direction about location of work (s.789GF)
- 4% relate to a dispute about a request for secondary employment or training etc (s.789GU).

[14] At 27 August 2020, 98% of cases had been finalised. Of the finalised cases:

- 68% were withdrawn
- 24% were resolved by mediation or conciliation
- 6% were dismissed
- 0.7% were resolved by arbitration
- 0.4% had orders issued to substitute JobKeeper direction
- 0.3% had orders issued that JobKeeper direction desirable
- 0.1% had orders issued setting aside a JobKeeper direction
- 0.1% were finalised pending application under another matter type

[15] Of the applications that raised early jurisdictional issues (noting that some applications relate to more than one subject):

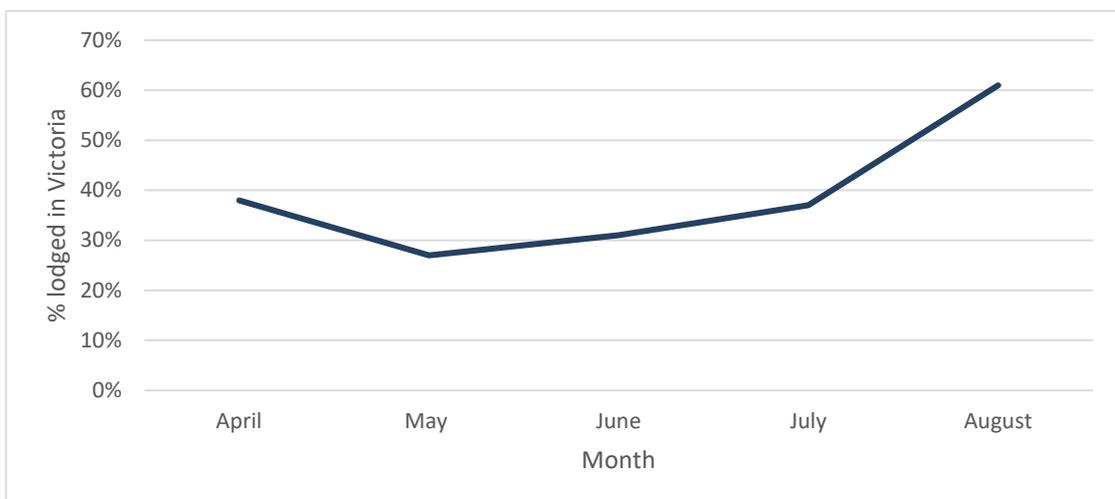
- 48% relate to whether a casual employee is an "eligible employee" (an employee for whom the employer can claim JobKeeper payments)
- 18% relate to the "one in all in" principle and nomination of employees for JobKeeper payments
- 5% relate to a stand down that occurred before 9 April 2020
- 12% relate to a dismissed employee who seeks re-engagement in order to become an eligible employee
- 32% relate to other jurisdictional issues.

[16] The greatest number of cases involve the Accommodation and food services industry (26%), followed by the Retail (20%), Arts and recreation services (9%), Education and training (private) (9%) and Health care and social assistances

(private) industries (8%). As at 27 August 2020, 51 decisions have been issued in relation to JobKeeper disputes.

- [17] Thirty-four per cent of cases involved employers with more than 100 employees, 27% involved employers with between 15 and 99 employees, 22% with between 1 and 14 employees and the employer size was not known in 17% of cases.
- [18] In approximately 81% of cases, applicants have been self-represented.
- [19] Most applications are the subject of a conference or hearing within 48 hours from lodgement and 80 per cent of applications are finalised within 4 days.
- [20] Since 9 May 2020, Victoria has accounted for 38.1% of JobKeeper applications lodged overall; but during August 2020, 61% of JobKeeper applications have been lodged in Victoria no doubt associated with the imposition of Stage 4 restrictions. The graph below sets out the percentage of JobKeeper dispute applications from Victoria by month since April (Chart 1).

**Chart 1: JobKeeper applications lodged in Victoria as per cent of all applications, April to August**



- [21] The last month has seen an increase in disputes about stand downs (44%). Disputes about requests for employees to take annual leave (32%) and about the wage condition and minimum payment guarantee (27%) have remained constant and there have been fewer disputes about requests for agreements about days and times of work (18%).

#### **Other COVID-19 related Commission work**

- [22] The *7 August 2020 Statement* sets out the awards varied in response to COVID-19. Since that time the Commission has issued decisions extending the

operation of Schedule X in the *Surveying Award 2020*<sup>6</sup> and extending the industry specific flexibility schedule in the *Vehicle Repair Services and Retail Award 2020*.<sup>7</sup>

- [23] A table of each of the awards containing a COVID-19 schedule and the expiry dates of each schedule is set out at **Attachment A**.
- [24] In the agreement making context, the Commission has seen an increase in applications to vary enterprise agreements. Between 16 March and 7 August 2020, applications to vary an enterprise agreement have more than tripled compared with the same period in 2018–19. The most common types of variation sought was to defer or remove a scheduled wage increase, with many of the increases due to come into effect on 1 July 2020. Other common variations were to extend the nominal expiry date and insert new later wage increases.

### **Flexible work and working from home**

- [25] One of the most significant shifts in working arrangements since the start of the pandemic has been an increase in working from home arrangements. Government health advice, encouraging employees to work from home wherever possible, has accelerated what had been an emerging feature of contemporary working arrangements in some occupations and industries.<sup>8</sup>
- [26] Data from the ABS show that almost one-third of employed persons *regularly* performed some work from home prior to the COVID-19 pandemic.<sup>9</sup> In May 2020, the ABS asked respondents if they had worked from home due to COVID-19 in the previous 4 weeks. Almost 2 in 5 employed persons (39 per cent) said they had worked from home in this period due to COVID-19.<sup>10</sup> However, this proportion would not include those who already worked from home prior to the onset of the pandemic. In June 2020, this proportion reduced to 34 per cent as restrictions eased and more people were able to return to workplaces as restrictions were eased.<sup>11</sup> Women (56%) were more likely to have been working from home than men (38%).<sup>12</sup>

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<sup>6</sup> [2020] FWCFB 4566

<sup>7</sup> [2020] FWCFB 3416

<sup>8</sup> See: Fair Work Commission (2020), [Information note – Government responses to COVID-19 pandemic](#), updated 28 August.

<sup>9</sup> ABS, [Characteristics of Employment, Australia, August 2019](#), Catalogue No. 6333.0.

<sup>10</sup> ABS, [Household Impacts of COVID-19 Survey, Detailed Release, May 2020](#), Catalogue No. 4940.0.

<sup>11</sup> ABS, [Household Impacts of COVID-19 Survey, Detailed Release, June 2020](#), Catalogue No. 4940.0.

<sup>12</sup> ABS, [Household Impacts of COVID-19 Survey, 29 Apr–4 May 2020](#), Catalogue No. 4940.0

- [27] Survey data indicates employees working in industries such as Retail, Agriculture and Transport and storage were less likely to work from home during the pandemic, while employees in Finance and insurance, Public administration and defence and Communication were more likely to do so.<sup>13</sup>
- [28] Preliminary findings from an April 2020 survey, undertaken by researchers at Swinburne University, found over three-quarters of managers believe their staff will work from home more often after COVID-19 than they did before it. The main identified benefits of working from home were no commute, greater flexibility and financial savings. The main challenges identified were the work/home boundary being blurred, distractions at home and trouble switching off after work.<sup>14</sup> Similarly, the Centre for Future Work in a briefing paper, *Working from Home: Opportunities and Risks* suggests that working from home will likely become more common in coming years and will become the 'new normal' for millions of workers.<sup>15</sup>
- [29] One mechanism available to facilitate working from home arrangements is through enterprise bargaining. An analysis of the Workplace Agreements Database indicates that in the December quarter 2019 around 350 current federal enterprise agreements had provisions for home-based work or telework. These provisions enable employees to perform some or all their work at home or at another site away from the office. While these agreements represent only around 3% of agreements, they cover just over 20% of employees. Public administration and safety and Financial and insurance services contained the highest proportions of current federal enterprise agreements that contained provisions for home-based work or telework. For more information, see the [Working from home information note](#) published on the Commission's website on 31 August 2020.
- [30] But the evidence suggests that enterprise bargaining is not readily accessible by small businesses.

### **Small businesses**

- [31] Relatively few employees employed in small businesses are covered by a collective agreement.
- [32] An information note published on 30 March 2020 provides data on employee bargaining by business size using the ABS Employee Earnings and Hours (EEH) publication which collects information on a range of data including the number of employees by method of setting pay and in what business sizes they are employed in Australia.

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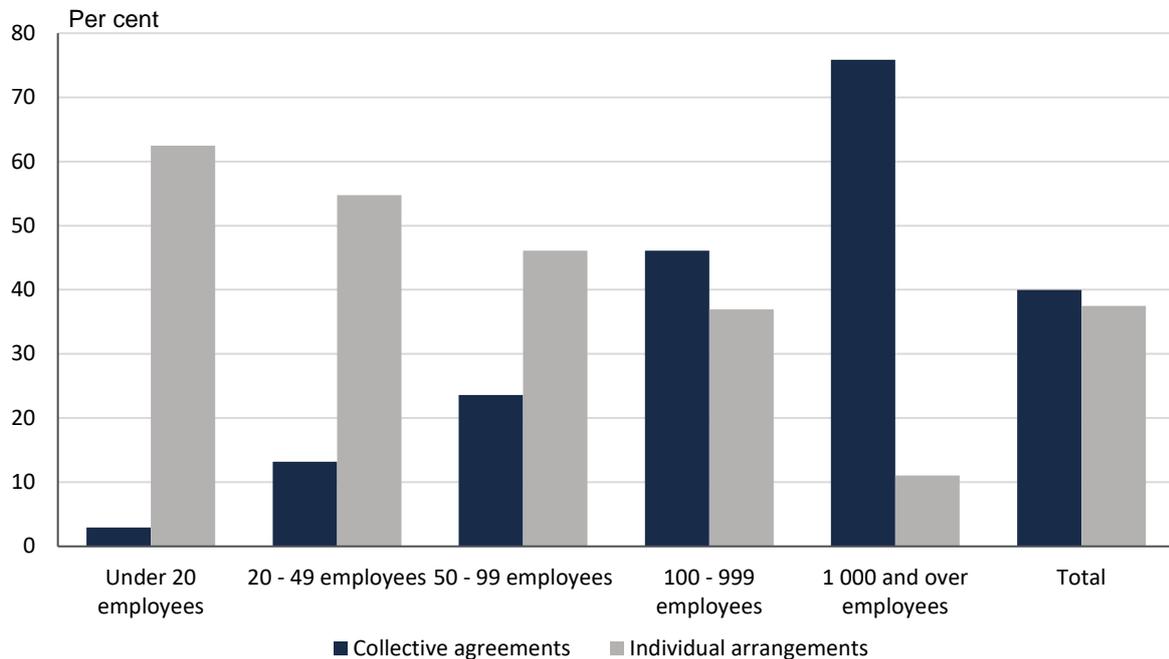
<sup>13</sup> Roy Morgan (2020), *Nearly a third of Australian workers have been '#WFH'*, Article No. 8451, 29 June, p. 1.

<sup>14</sup> Hopkins J and Bardeel A (2020), *WorkFLEX infographic: COVID-19 Work From Home Infographic*, Swinburne University, accessed 16 July 2020.

<sup>15</sup> Pennington A and Stanford J (2020), *Briefing Paper: Working from Home: Opportunities and Risks*, Centre for Future Work, 13 April, p. 2

- [33] The ABS' EEH publication collects business size data according to the following size splits:
- Under 20 employees;
  - 20-49 employees;
  - 50-99 employees;
  - 100-999 employees; and
  - 1000 and over employees.
- [34] To examine the extent of employee bargaining by business size, an analysis of the 'collective agreement' and 'individual arrangement' categories was undertaken using ABS EEH data.
- [35] The data show that in May 2018, the majority of non-managerial employees in small businesses were employed on individual arrangements, with a small proportion on collective agreements (Chart 2). The number of non-managerial employees in small businesses on collective agreements and individual arrangements were 65 400 and 1 379 100, respectively.
- [36] There is a positive correlation between business size and collective agreements, with an increase in business size associated with an increase in the proportion of non-managerial employees on collective agreements. Conversely, there is a negative correlation between business size and individual arrangements, with an increase in business size associated with a decrease in the proportion of non-managerial employees on individual arrangements (Chart 2).

**Chart 2: Proportion of non-managerial employees with their pay set by collective agreements and individual arrangements by business size, May 2018**



Note: Data on method of setting pay by business size exclude owner managers of incorporated businesses.

Source: ABS, *Employee Earnings and Hours, Australia, May 2018*, Catalogue No. 6306.0.

- [37] Under modern awards, an employer and an individual employee can reach an agreement on how certain provisions apply including: time off instead of payment for overtime, cashing out or taking annual leave in advance and substitution of public holidays.
- [38] Modern awards also include facilitative provisions that enable the flexible operation of provisions in the award such as variation to the span of ordinary hours, 12 hour shifts and the variation of meal breaks by agreement between the employer and the majority of employees affected in the workplace. A right to request flexible working arrangements is also available to some employees under the National Employment Standards set out in the Fair Work Act.
- [39] However, most modern awards do not expressly provide for nor deal with issues relating to working from home arrangements.
- [40] While working from home is currently possible and permissible in many workplaces, the absence of express provision to facilitate working from home can impose practical constraints on these arrangements. For example, absent an express provision, other award provisions such as the span of hours within which ordinary hours can be worked, continue to apply. This can constrain the utility of working from home arrangements from both the employee and employer perspectives as it requires the employer to pay overtime or penalty payments in circumstances where the employee has sought the additional flexibility in order to meet their preferences.

## Draft Award Flexibility Schedule

- [41] It is likely the direct economic and social impacts of the pandemic will be felt for some time to come and that there will be a continuing need for flexible work arrangements to assist employers and employees in adapting to the changed conditions and to support the recovery.
- [42] To facilitate further workplace flexibility to enable employers and employees to respond to challenges quickly, as well as meeting the changing expectations of employees, Commission staff have prepared a model Flexibility Schedule for potential inclusion in appropriate modern awards.
- [43] It is intended that the model Schedule be used as a starting point for discussion between parties. Not all of the clauses proposed in the schedule will be suitable for all awards and some clauses will require tailoring to meet the needs of a particular industry or occupation. Interested parties may also have additional proposals for providing flexibility. The draft model Schedule is attached to this Statement at **Attachment B**. The draft model Schedule includes a number of comments and matters for interested parties to consider.
- [44] The draft model Flexibility Schedule includes a provision that allows for disputes about the operation of the schedule to be dealt with by the Commission, by arbitration. The arbitration provision requires an employer that proposes to or makes an arrangement under the schedule, to consent to the arbitration of any dispute. This provision is consistent with the dispute resolution procedure that was inserted in Schedule I to the *Clerks-Private Sector Award 2020*. Similar arbitration clauses are a feature of other award specific flexibility schedules which have been inserted into various modern awards, with the consent of the major industrial parties. Access to arbitration is also a feature of the JobKeeper enabling directions in Part 6-4C of the Fair Work Act (see s.789GV).
- [45] The draft model Flexibility Schedule includes a provision which allows for an employer and an employee to reach agreement on a working from home arrangement that balances the personal and work responsibilities of the employee with the business needs of the employer. The model Flexibility Schedule also includes provisions for:
- full time or part time employees to request to compress their working week so that their usual weekly ordinary hours are worked over a reduced number of their usual work days.
  - employees to take twice as much annual leave at half pay with the agreement of their employer.
  - employees to purchase additional leave with the agreement of their employer.
  - a change in the span of hours in a workplace or section of a workplace with the agreement of 75% of employees.
  - an agreement to share a reduction in working hours in a workplace or section of a workplace with the agreement of 75% of employees, in

circumstances where an employer cannot usefully employ all of the full time and part time employees in a workplace or section of a workplace.

- an employer direction to an employee to perform all duties within their skill and competency.
- an employer direction to an employee to work at a different workplace (including the employee's home).
- an employer direction to employees to stagger starting and finishing times of work.

[46] The award flexibility terms contained in the draft model Schedule are likely to be of particular relevance to small businesses, as they are less likely to be covered by an enterprise agreement.

[47] Throughout the 4 yearly review of modern awards, insights gained from engagement with small businesses about matters such as the format, structure, language and usability<sup>16</sup> of awards has led to the restructure of each of the 121 modern awards. The new modern awards structure follows a more logical path from the time of engagement through to termination of employment and redundancy. A schedule of hourly rates has also been included to provide a calculated wage rate rather than a percentage of the hourly rate and avoid the need for employers and employees to make calculations. The model Flexibility Schedule provides a further opportunity to improve the usability of awards, particularly for small businesses.

[48] According to the ABS' EEH data<sup>17</sup>, award coverage among employees in small businesses is highest (at least 40 per cent) in:

- Accommodation and food services;
- Retail trade; and
- Other services.

[49] Based on the mapping exercise undertaken by staff of the Commission,<sup>18</sup> the following modern awards are mapped to these industries:

#### ***Accommodation and food services***

- *Hospitality Industry (General) Award 2020*
- *Restaurant Industry Award 2020*
- *Fast Food Industry Award 2010*
- *Registered and Licensed Clubs Award 2010*

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<sup>16</sup> Sweeney Research, *Citizen Co-design with small business owners report*, 13 August 2014

<sup>17</sup> [Information Note](#) on small business and modern awards

<sup>18</sup> Preston M, Pung A, Leung E, Casey C, Dunn A & Richter O (2012) *Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006: Phase 1 report*, Research Report 2/2012, Fair Work Australia; Fair Work Commission (2020), *Information note—Modern awards and industries*, 30 March.

### **Retail trade**

- *Vehicle Repair, Services and Retail Award 2020*
- *General Retail Industry Award 2010*
- *Meat Industry Award 2020*
- *Seafood Processing Award 2020*
- *Hospitality Industry (General) Award 2020*
- *Business Equipment Award 2020*
- *Nursery Award 2020*
- *Pharmacy Industry Award 2020*
- *Commercial Sales Award 2020*

### **Other services**

- *Vehicle Repair, Services and Retail Award 2020*
- *Manufacturing and Associated Industries and Occupations Award 2020*
- *General Retail Industry Award 2010*
- *Electrical, Electronic and Communications Contracting Award 2010*
- *Textile, Clothing, Footwear and Associated Industries Award 2010*
- *Hair and Beauty Industry Award 2010*
- *Fitness Industry Award 2010*
- *Cemetery Industry Award 2020*
- *Funeral Industry Award 2010*
- *Dry Cleaning and Laundry Industry Award 2020*
- *Car Parking Award 2020*

### **Next Steps**

- [50] As mentioned earlier, the model Flexibility Schedule has been drafted by Commission staff as a starting point for discussions between the industrial parties with an interest in particular modern awards.
- [51] Interested parties are encouraged to discuss and reach agreement on the extent of flexibility required and any necessary tailoring of specific terms to meet the needs of the employers and employees covered by particular modern awards.
- [52] Throughout the pandemic the Commission has demonstrated a capacity to expedite consent applications. Joint applications, or those supported by a consensus position amongst parties, are able to be dealt with very quickly.
- [53] In the event that applications to vary modern awards are contested then different considerations arise, necessitating a more protracted hearing process.<sup>19</sup>
- [54] The Commission is available to facilitate variation applications to assist employers and employees to deal with the impacts of the pandemic. The

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<sup>19</sup> See *AHA and UWU* [2020] FWCFB 1574 at [8] – [15]

Commission is committed to fostering cooperation between parties to get the best outcomes for employers and employees. Interested parties are encouraged to email [amod@fwc.gov.au](mailto:amod@fwc.gov.au).

***Urgent applications related to the COVID-19 pandemic***

[55] The Commission has established an email account for urgent applications to deal with the consequences of COVID-19 such as applications to vary enterprise agreements or other instruments. The email address for these applications is [COVID19Applications@fwc.gov.au](mailto:COVID19Applications@fwc.gov.au).

***Improving our performance***

[56] The Commission remains focused on improving the services we provide the public. Feedback and suggestions for improvement are welcome and can be sent to [stakeholderrelations@fwc.gov.au](mailto:stakeholderrelations@fwc.gov.au).

PRESIDENT

## ATTACHMENT A

### Expiry dates of Schedules X and Award specific COVID-19 Schedules

	Expired schedules
	Schedules expiring on 30 September
	Schedules expiring on 29 October 2020
	Schedules expiring on other dates

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<a href="#">Aboriginal Community Controlled Health Services Award 2020</a>	MA000115	AM2020/13 AM2020/34	Yes	29 October 2020	No	N/A	<a href="#">[2020] FWCFB 3986</a>
<a href="#">Aged Care Award 2010</a>	MA000018	AM2020/13	Yes	29 October 2020	Yes (Schedule Y) AM2020/13	29 October 2020	<a href="#">[2020] FWCFB 3986</a>
<a href="#">Air Pilots Award 2020</a>	MA000046	AM2020/12 AM2020/34	Yes	31 December 2020	No	N/A	<a href="#">Transcript, 30 June 2020, [119] – [123].</a>
<a href="#">Aircraft Cabin Crew Award 2010</a>	MA000047	AM2020/12	Yes	30 June 2020	No	N/A	<a href="#">[2020] FWCFB</a>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
							<a href="#">1827; [2020] FWCFB 3281</a>
<a href="#">Airline Operations-Ground Staff Award 2020</a>	MA000048	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<a href="#">Airport Employees Award 2020</a>	MA000049	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<a href="#">Alpine Resorts Award 2010</a>	MA000092	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<a href="#">Aluminium Industry Award 2020</a>	MA000060	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<a href="#">Ambulance and Patient Transport Industry Award 2020</a>	MA000098	AM2020/13	Yes	29 October 2020	No	N/A	<a href="#">[2020] FWCFB 3986</a>
<a href="#">Amusement, Events and Recreation Award 2020</a>	MA000080	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<a href="#">Animal Care and Veterinary Services Award 2020</a>	MA000118	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<a href="#">Aquaculture Industry Award 2010</a>	MA000114	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<a href="#">Architects Award 2020</a>	MA000079	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
		AM2020/34					
<u>Asphalt Industry Award 2020</u>	MA000054	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Banking, Finance and Insurance Award 2020</u>	MA000019	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Book Industry Award 2010</u>	MA000078	AM2020/12	Yes	30 June 2020	No	N/A	<u>[2020] FWCFB 1827;</u> <u>[2020] FWCFB 3281</u>
<u>Broadcasting, Recorded Entertainment and Cinemas Award 2010</u>	MA000091	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Building and Construction General On-Site Award 2010</u>	MA000020	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Business Equipment Award 2020</u>	MA000021	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Car Parking Award 2020</u>	MA000095	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Cement, Lime and Quarrying Award 2020</u>	MA000055	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Cemetery Industry Award 2020</u>	MA000070	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u>Children's Services Award 2010</u>	MA000120	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Cleaning Services Award 2020</u>	MA000022	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Clerks—Private Sector Award 2020</u>	MA000002	AM2020/12	Yes	30 June 2020	Yes (Schedule I) AM2020/10 AM2020/30	30 September 2020	<u>[2020] FWCFB 1827;</u> <u>[2020] FWCFB 3443</u>
<u>Commercial Sales Award 2020</u>	MA000083	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Concrete Products Award 2020</u>	MA000056	AM2020/12	Yes	30 June 2020	No	N/A	<u>[2020] FWCFB 1827;</u> <u>[2020] FWCFB 3281</u>
<u>Contract Call Centres Award 2020</u>	MA000023	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Cotton Ginning Award 2020</u>	MA000024	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Educational Services (Post-Secondary Education) Award 2020</u>	MA000075	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u><a href="#">Educational Services (Schools) General Staff Award 2020</a></u>	MA000076	AM2020/12	Yes	30 June 2020	Yes (Schedule J) AM2020/17	1 August 2020	<u><a href="#">[2020] FWCFB 1827</a></u> ; <u><a href="#">[2020] FWCFB 2108</a></u>
<u><a href="#">Educational Services (Teachers) Award 2010</a></u>	MA000077	AM2020/12	Yes	30 June 2020	No	N/A	<u><a href="#">[2020] FWCFB 1827</a></u> ; <u><a href="#">[2020] FWCFB 3281</a></u>
<u><a href="#">Fast Food Industry Award 2010</a></u>	MA000003	AM2020/12	Yes	30 September 2020	Yes (Schedule H) AM2020/20	31 July 2020	<u><a href="#">[2020] FWCFB 3490</a></u> ; <u><a href="#">[2020] FWCFB 2316</a></u>
<u><a href="#">Fitness Industry Award 2010</a></u>	MA000094	AM2020/12	Yes	30 September 2020	No	N/A	<u><a href="#">[2020] FWCFB 3490</a></u>
<u><a href="#">Food, Beverage and Tobacco Manufacturing Award 2010</a></u>	MA000073	AM2020/12	Yes	30 September 2020	No	N/A	<u><a href="#">[2020] FWCFB 3490</a></u>
<u><a href="#">Funeral Industry Award 2010</a></u>	MA000105	AM2020/12	Yes	30 September 2020	No	N/A	<u><a href="#">[2020] FWCFB 3490</a></u>
<u><a href="#">Gardening and Landscaping Services Award 2020</a></u>	MA000101	AM2020/12	Yes	30 September 2020	No	N/A	<u><a href="#">[2020] FWCFB 3490</a></u>
<u><a href="#">General Retail Industry Award 2010</a></u>	MA000004	AM2020/12	Yes	30 September 2020	No	N/A	<u><a href="#">[2020] FWCFB 3490</a></u>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u>Graphic Arts, Printing and Publishing Award 2010</u>	MA000026	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<u>Hair and Beauty Industry Award 2010</u>	MA000005	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<u>Health Professionals and Support Services Award 2020</u>	MA000027	AM2020/13	Yes	29 October 2020	Yes (Schedule Y) AM2020/13	29 October 2020	<a href="#">[2020] FWCFB 3986</a>
<u>Higher Education Industry-Academic Staff-Award 2010</u>	MA000006	AM2020/12	Yes	30 June 2020	No	N/A	<a href="#">[2020] FWCFB 1827</a> ; <a href="#">[2020] FWCFB 3281</a>
<u>Higher Education Industry-General Staff-Award 2020</u>	MA000007	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<u>Horse and Greyhound Training Award 2020</u>	MA000008	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<u>Horticulture Award 2010</u>	MA000028	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<u>Hospitality Industry (General) Award 2010</u>	MA000009	AM2020/12	Yes	30 September 2020	Yes (Schedule J) AM2020/35	27 September 2020	<a href="#">[2020] FWCFB 3490</a> ; <a href="#">2020 FWCFB 3405</a>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u>Joinery and Building Trades Award 2010</u>	MA000029	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Journalists Published Media Award 2010</u>	MA000067	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Labour Market Assistance Industry Award 2020</u>	MA000099	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Legal Services Award 2020</u>	MA000116	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Live Performance Award 2010</u>	MA000081	AM2020/12	Yes	30 June 2021	No	N/A	<u>Transcript, 30 June 2020, [100] – [105].</u>
<u>Local Government Industry Award 2020</u>	MA000112	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Mannequins and Models Award 2020</u>	MA000117	AM2020/12	Yes	30 June 2020	No	N/A	<u>[2020] FWCFB 1827;</u> <u>[2020] FWCFB 3281</u>
<u>Manufacturing and Associated Industries and Occupations Award 2020</u>	MA000010	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u>Marine Tourism and Charter Vessels Award 2020</u>	MA000093	AM2020/12	Yes	30 June 2020	No	N/A	<u>[2020] FWCFB 1827;</u> <u>[2020] FWCFB 3281</u>
<u>Market and Social Research Award 2020</u>	MA000030	AM2020/12	Yes	30 June 2020	No	N/A	<u>[2020] FWCFB 1827;</u> <u>[2020] FWCFB 3281</u>
<u>Meat Industry Award 2020</u>	MA000059	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Medical Practitioners Award 2020</u>	MA000031	AM2020/13	Yes	29 October 2020	No	N/A	<u>[2020] FWCFB 3986</u>
<u>Miscellaneous Award 2010</u>	MA000104	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Mobile Crane Hiring Award 2010</u>	MA000032	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Nursery Award 2020</u>	MA000033	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Nurses Award 2010</u>	MA000034	AM2020/13	Yes	29 October 2020	Yes (Schedule Y) AM2020/13	29 October 2020	<u>[2020] FWCFB 3986</u>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u>Passenger Vehicle Transportation Award 2020</u>	MA000063	AM2020/12	Yes	30 June 2020	No	N/A	<u>[2020] FWCFB 1827;</u> <u>[2020] FWCFB 3281</u>
<u>Pastoral Award 2010</u>	MA000035	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Pest Control Industry Award 2020</u>	MA000097	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Pharmaceutical Industry Award 2010</u>	MA000069	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Pharmacy Industry Award 2010</u>	MA000012	AM2020/13	Yes	29 October 2020	No	N/A	<u>[2020] FWCFB 3986</u>
<u>Poultry Processing Award 2020</u>	MA000074	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Premixed Concrete Award 2020</u>	MA000057	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Professional Diving Industry (Recreational) Award 2020</u>	MA000109	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Racing Clubs Events Award 2010</u>	MA000013	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Racing Industry Ground Maintenance Award 2020</u>	MA000014	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u><a href="#">Rail Industry Award 2020</a></u>	MA000015	AM2020/12	Yes	30 September 2020	No	N/A	<u><a href="#">[2020] FWCFB 3490</a></u>
<u><a href="#">Real Estate Industry Award 2020</a></u>	MA000106	AM2020/12	Yes	30 June 2020	Yes (Schedule I) AM2020/14 , AM2020/23	1 November 2020	<u><a href="#">[2020] FWCFB 1827;</a></u> <u><a href="#">[2020] FWCFB 3946</a></u>
<u><a href="#">Registered and Licensed Clubs Award 2010</a></u>	MA000058	AM2020/12	Yes	30 September 2020	No	N/A	<u><a href="#">[2020] FWCFB 3490</a></u>
<u><a href="#">Restaurant Industry Award 2010</a></u>	MA000119	AM2020/12	Yes	30 September 2020	Yes (Schedule I) AM2020/11 , AM2020/36	27 September 2020	<u><a href="#">[2020] FWCFB 3490;</a></u> <u><a href="#">2020 FWCFB 3401</a></u>
<u><a href="#">Road Transport (Long Distance Operations) Award 2010</a></u>	MA000039	AM2020/12	Yes	30 June 2020	No	N/A	<u><a href="#">[2020] FWCFB 1827;</a></u> <u><a href="#">[2020] FWCFB 3281</a></u>
<u><a href="#">Road Transport and Distribution Award 2010</a></u>	MA000038	AM2020/12	Yes	30 June 2020	No	N/A	<u><a href="#">[2020] FWCFB 1827;</a></u> <u><a href="#">[2020] FWCFB 3281</a></u>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u>Salt Industry Award 2010</u>	MA000107	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Seafood Processing Award 2020</u>	MA000068	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Security Services Industry Award 2010</u>	MA000016	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Silviculture Award 2020</u>	MA000040	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Social, Community, Home Care and Disability Services Industry Award 2010</u>	MA000100	AM2020/12	Yes	29 October 2020	No	N/A	<u>[2020] FWCFB 3986</u>
<u>Sporting Organisations Award 2020</u>	MA000082	AM2020/12	Yes	30 June 2020	No	N/A	<u>[2020] FWCFB 1827;</u> <u>[2020] FWCFB 3281</u>
<u>State Government Agencies Award 2020</u>	MA000121	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Storage Services and Wholesale Award 2020</u>	MA000084	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Sugar Industry Award 2020</u>	MA000087	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u>Supported Employment Services Award 2020</u>	MA000103	AM2020/13	Yes	29 October 2020	No	N/A	<a href="#">[2020] FWCFB 3986</a>
<u>Surveying Award 2020</u>	MA000066	AM2020/12	Yes	31 October 2020	No	N/A	<a href="#">[2020] FWCFB 1827</a> ; <a href="#">[2020] FWCFB 3281</a> <a href="#">[2020] FWCFB 4566</a>
<u>Telecommunications Services Award 2010</u>	MA000041	AM2020/12	Yes	30 June 2020	No	N/A	<a href="#">[2020] FWCFB 1827</a> ; <a href="#">[2020] FWCFB 3281</a>
<u>Textile, Clothing, Footwear and Associated Industries Award 2010</u>	MA000017	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<u>Timber Industry Award 2010</u>	MA000071	AM2020/12	Yes	30 September 2020	No	N/A	<a href="#">[2020] FWCFB 3490</a>
<u>Transport (Cash in Transit) Award 2020</u>	MA000042	AM2020/12	Yes	30 June 2020	No	N/A	<a href="#">[2020] FWCFB 1827</a> ; <a href="#">[2020] FWCFB 3281</a>
<u>Travelling Shows Award 2020</u>	MA000102	AM2020/12	Yes	30 June 2020	No	N/A	<a href="#">[2020] FWCFB 1827</a> ; <a href="#">[2020] FWCFB 3281</a>

Award title	Award code	Matter number	Schedule X (Yes/No)	Schedule X Expiry date	Award specific COVID schedule (Yes/No)	Award specific COVID schedule expiry date	Decisions, Statements & Transcripts
<u>Vehicle Repair, Services and Retail Award 2020</u>	MA000089	AM2020/12	Yes	30 September 2020	Yes (Schedule I) AM2020/22 AM2020/37 AM2020/88	30 September 2020	<u>[2020] FWCFB 3490;</u> <u>2020 FWCFB 4018</u>
<u>Waste Management Award 2020</u>	MA000043	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Water Industry Award 2020</u>	MA000113	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Wine Industry Award 2010</u>	MA000090	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>
<u>Wool Storage, Sampling and Testing Award 2010</u>	MA000044	AM2020/12	Yes	30 September 2020	No	N/A	<u>[2020] FWCFB 3490</u>

## ATTACHMENT B – Schedule Y—Model Flexibility Schedule

*This Schedule has been drafted by Commission staff, it does not represent the concluded view of the Commission on any issue.*

### Y.1 Objects

The objects of Schedule Y are to provide employees and employers with access to additional flexibility in working arrangements under this award in the context of the continuing impact of the COVID-19 pandemic and recovery from it, so as to:

- (a) allow employers and employees to genuinely agree on flexible working arrangements that meet both business and personal needs; and
- (b) continue to ensure a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions, and promote productivity and economic growth.

### Y.2 Period of operation and review

**Y.2.1** Schedule Y operates from [insert] 2020 until [insert] 2021.

**Y.2.2** The operation of Schedule Y will be reviewed by the Commission in or before [insert] 2021.

**Commented [FWC1]:** The initial period of operation of Schedule Y would be 12 months.

The Commission will undertake a review of the Schedule to determine whether any issues have arisen with the operation of the Schedule and whether any adjustments are necessary. Interested parties will be invited to participate in the review. The review would be timed to conclude at least one month before expiry of the initial period of operation and a statement about the process will be issued in due course.

### Y.3 Definitions

**Y.3.1** In Schedule Y:

- (a) **Annual leave at half pay agreement** means an agreement under clause Y.7 to an employee taking annual leave on half pay.
- (b) **Compressed working week agreement** means an agreement under clause Y.6 to compress an employee's working week.
- (c) **Long term regular casual employee** means a casual employee who has:
  - (i) been employed by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months; and
  - (ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.
- (d) **Purchased leave agreement** means an agreement under clause Y.8 to an employee purchasing paid leave.

**Commented [FWC2]:** Y.3.1(c) Long term regular casual employee - This provision is based on s.65(2)(b) (which specifies casual employees entitled to make a request for flexible working arrangements), but with the necessary period of regular and systematic employment reduced from 12 months to 6 months. Parties may wish to consider whether this reduction is appropriate.

- (e) Without limiting what are reasonable business grounds, **reasonable business grounds** include the following:
- (i) that the new working arrangements requested by the employee would be too costly for the employer;
  - (ii) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
  - (iii) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
  - (iv) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
  - (v) that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.
- (f) **Working from home agreement** means an agreement under clause Y.5 to a working from home arrangement.

**Commented [FWC3]:** Y.3.1(e) Reasonable business grounds- This is the standard definition in s.65(5A). Parties may wish to consider whether this definition should be tailored to the context of this Schedule or the context of a particular award.

#### Y.4 Arbitration of disputes

**Y.4.1** An employer that proposes or makes any arrangement under Schedule Y consents to any dispute in relation to the proposal or arrangement, and any dispute in relation to any further proposal or arrangement under Schedule Y, being settled by the Fair Work Commission through arbitration in accordance with clause *[insert]*—Dispute resolution and section 739(4) of the Act.

**Y.4.2** For the purpose of clause Y.4.1 an employer proposes or makes an arrangement under Schedule Y if the employer:

- (a) makes a working from home agreement, compressed working week agreement, annual leave at half pay agreement or purchased leave agreement with an employee under clauses Y.5 to Y.8;
- (b) notifies employees of a proposed change to the span of ordinary hours under clause Y.9 or of a proposed reduction in usual weekly ordinary hours of work under clause Y.10, or makes such a change under clause Y.9 or clause Y.10;
- (c) gives an employee a direction to perform all duties within skill and competency under clause Y.11, notifies an employee of a proposed direction to work at a different workplace under clause Y.12 or gives an employee a direction under clause Y.12; or
- (d) notifies an employee of a proposed direction to stagger start and finish times under clause Y.13 or gives an employee a direction under clause Y.13.

## Y.5 Working from home agreement

**Y.5.1** A full-time, part-time or long term regular casual employee may make a written request to their employer to work from home on some or all of the employee's days of work, so as to better balance their work responsibilities and personal needs.

**Y.5.2** As part of the employee's written request to work from home, the employee may request a change to the employee's usual times of work when working their usual daily hours of work from home.

**Y.5.3** The employer must give the employee a written response to the employee's request under clause Y.5 to work from home within 21 days.

**Note:** the employee's written request and the employer's written response could be given by email or other electronic means.

**Y.5.4** Before responding to a request under clause Y.5 to work from home, the employer must discuss the request with the employee and genuinely try to reach agreement on a working from home arrangement that will reasonably accommodate the employee's circumstances having regard to:

- (a) the reasons why the employee wishes to work from home;
- (b) the consequences for the employee if the employee is unable to work from home; and
- (c) any reasonable business grounds for refusing the request.

**Y.5.5** If the employee has requested a change to the employee's usual times of work when working from home and working at the requested times would involve additional work outside the span of ordinary hours, the employee and employer may agree to change the span of ordinary hours when the employee works from home by up to one hour at each end of the span.

Example 1: If the span of ordinary hours under this award is 7 am–7 pm Monday to Friday, the employee and employer could agree to change the span to 6 am–6 pm Monday to Friday.

Example 2: If the span of ordinary hours under this award is 7 am–7 pm Monday to Friday, the employee and employer could agree to change the span to 6 am–8 pm Monday to Friday.

**Y.5.6** Subject to clause Y.5.7, if a change to the span of ordinary hours is agreed under clause Y.5.5, the agreed span of ordinary hours will apply for the purposes of this award when the employee is working from home.

**Y.5.7** An agreement under clause Y.5.5 is of no effect if:

- (a) the change to the employee's usual working times was sought by the employer as a condition of the employer's agreement to the employee working from

**Commented [FWC4]:** During the COVID-19 pandemic, there has been an increase in the number of employees working from home (see Information Note). This clause aims to provide the flexibility for employers and employees to agree to ongoing working from home arrangements that genuinely meet both of their needs. It may not be appropriate to include this provision in every modern award depending on the nature of the industry or occupation covered by the award and the range of classifications in which employees can be employed. This clause could be tailored depending on the particular circumstances of an award.

**Commented [FWC5]:** Y.5.2 A request for a change in working hours is dealt with further at Y.5.5.

**Commented [FWC6]:** Y.5.3 21 days is the time for an employer to provide a response to a request under s.65. Parties are asked to consider whether 21 days is an appropriate period for the employer to engage in discussions with the employee (Y.5.4) and provide a written response in relation to a request to work from home.

**Commented [FWC7]:** Y.5.4 The requirements for an employer discussion are based on the 'Request for flexible working arrangements' model term. See [2018] FWCFB 6863

**Commented [FWC8]:** Y.5.5 The provision may be tailored on an award specific basis, taking into account the span of ordinary hours that is currently in an award and any existing flexibility to amend the span of ordinary hours. The extent to which such an agreement may override other award procedures and limitations on changes to working times would be determined on an award by award basis.

This clause only allows a change in the span of ordinary hours by up to one hour at each end of the span. It is noted that the agreed Schedule I–Award Flexibility During the COVID-19 Pandemic in the *Clerks-Private Sector Award 2020* provided for a greater change in the span.

**Commented [FWC9]:** Y.5.7 This clause aims to provide a range of protections to employees. Parties are asked to consider whether these protections are necessary or if any additional protections should be included.

home;

- (b) the change to the employee's usual working times was sought by the employer as a condition of the employee's employment or continuing employment;
- (c) the employer otherwise exerted undue influence or undue pressure on the employee to reach agreement; **or**
- (d) the agreement is unreasonable in all of the circumstances.

**Y.5.8** If the employee and employer have agreed to a working from home arrangement, the employer's written response under clause Y.5.3 must set out the agreement. The working from home agreement must **include**:

- (a) the names of the employee and employer;
- (b) that the working from home agreement is made under clause Y.5 of this award;
- (c) the days (or part days) on which the employee will work from home, the date this will commence, and whether the working from home is on-going or for a specified period;
- (d) the employee's usual times of work when not working from home on the days (or part days) on which the employee will work from home;
- (e) any agreed change to the employee's usual times of work when working from home;
- (f) if the employee and employer have made an agreement under clause Y.5.5, the agreed span of ordinary hours that will apply for the purposes of this award when the employee is working from home; and
- (g) that the working from home agreement may be terminated at any time by agreement between the employee and employer, or by the employee or employer giving 2 weeks' written notice.

**Y.5.9** If the employee and employer have not agreed to a working from home arrangement, the employer's written response under clause Y.5.3 **must**:

- (a) include details of the reasons the employer has refused the employee's request to work from home, including the business ground or grounds for the refusal and how the ground or grounds apply;
- (b) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
- (c) if the employer can offer the employee such changes in working arrangements, set out those changes.

**Y.5.10** The employer must keep a copy of a working from home agreement as an employee record for 7 years in a form that is legible and readily accessible to a Fair Work **Inspector**.

**Commented [FWC10]: Y.5.7(c)** This provision paraphrases the opening words of s.344 of the FW Act. Parties are asked to consider whether this is an appropriate safeguard or whether the wording from the Individual Flexibility Arrangements model term should be used:

"An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress."

**Commented [FWC11]: Y.5.8** Interested parties are asked to comment on the range of requirements for the written agreement.

**Commented [FWC12]: Y.5.9** This clause provides scope for the employer and the employee to agree to other changes in working arrangements if the employer is unable to accommodate the employee's request.

**Commented [FWC13]: Y.5.10** This clause requires an employer to keep a copy of a working from home agreement as if it was an employee record to which s.535 of the Act applies.

**Y.5.11** A working from home agreement may be terminated at any time by agreement between the employee and employer, or by the employee or employer giving 2 weeks' written notice. If not terminated earlier, a working from home agreement terminates on *[insert expiry date of Schedule]* 2021.

**Y.5.12** When a working from home agreement terminates, the employee must revert to their prior working arrangements.

**Y.6 Compressed working week agreement**

**Y.6.1** A full-time or part-time employee may make a written request to their employer to work their usual weekly ordinary hours of work over a reduced number of their usual days of work, so as to better balance their work responsibilities and personal needs.

Example: A full-time employee who works 38 hours over 5 days Monday to Friday (7.6 hours per day), may request to work 38 hours over 4 days Monday to Thursday (9.5 hours per day).

**Y.6.2** The employer must give the employee a written response to the employee's request under clause Y.6 to compress their working week within 21 days.

Note: the employee's written request and the employer's written response could be given by email or other electronic means.

**Y.6.3** Before responding to a request under clause Y.6 to compress a working week, the employer must discuss the request with the employee and genuinely try to reach agreement on a compressed working week arrangement that will reasonably accommodate the employee's circumstances having regard to:

- (a) the reasons why the employee wishes to compress their working week;
- (b) the consequences for the employee if the employee is unable to compress their working week; and
- (c) any reasonable business grounds for refusing the request.

**Y.6.4** A compressed working week agreement must not result in an employee working in excess of the maximum number of daily ordinary hours of work provided for under this award or working without the breaks during work periods or without the breaks between work periods required under this award.

**Y.6.5** Subject to clause Y.6.6, while working in accordance with a compressed working week agreement, the employee will not be entitled to any additional payment under this award just for working the agreed increased daily ordinary hours on any day. The employee will be entitled to any additional payment that this award provides for because the employee works outside the span of ordinary hours under clause *[insert]*—Ordinary hours of this award, or works increased hours on days or at times that attract penalties or loadings under this award.

**Commented [FWC14]: Y.6** This provision allows an employee to request to work their usual weekly ordinary hours of work over a reduced number of days.

**Commented [FWC15]: Y.6.3** The requirements for employer discussion are based on the 'Request for flexible working arrangements' model term. See [\[2018\] FWCFCB 6863](#)

**Commented [FWC16]: Y.6.4** The limitations on the maximum number of daily ordinary hours of work will need to be determined on an award by award basis taking into account the specific limitations included in each award.

**Commented [FWC17]: Y.6.5** The qualifications to the exclusion from additional payment will need to be tailored on an award by award basis.

Interested parties are also asked to consider how this clause will interact with the rostering provisions in awards and whether an additional mechanism is required in the clause to implement the reduction in days of work and increased daily hours.

**Y.6.6** A compressed working week agreement is of no effect if:

- (a) the reduction in the employee's usual days of work was sought by the employer as a condition of the employee's employment or continuing employment;
- (b) the employer otherwise exerted undue influence or undue pressure on the employee to reach agreement; **or**
- (c) the agreement is unreasonable in all of the circumstances.

**Commented [FWC18]: Y.6.6(b)** This provision paraphrases the opening words of s.344 of the FW Act.

**Y.6.7** If the employee and employer have agreed to a compressed working week arrangement, the employer's written response under clause Y.6.2 must set out the agreement. The compressed working week agreement must include:

- (a) the names of the employee and employer;
- (b) that the compressed working week agreement is made under clause Y.6 of this award;
- (c) the employee's usual weekly ordinary hours of work, days of work and daily hours of work prior to the agreement commencing;
- (d) the employee's agreed days of work and daily hours of work under the agreement and when this will commence; and
- (e) that the compressed working week agreement may be terminated at any time by agreement between the employee and employer, or by the employee or employer giving 2 weeks' written notice.

**Y.6.8** If the employee and employer have not agreed to a compressed working week arrangement, the employer's written response under clause Y.6.2 **must**:

- (a) include details of the reasons the employer has refused the employee's request for a compressed working week, including the business ground or grounds for the refusal and how the ground or grounds apply;
- (b) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
- (c) if the employer can offer the employee such changes in working arrangements, set out those changes.

**Commented [FWC19]: Y.6.8** This clause provides scope for the employer and the employee to agree to other changes in working arrangements if the employer is unable to accommodate the employee's request.

**Y.6.9** The employer must keep a copy of a compressed working week agreement as an employee record for 7 years in a form that is legible and readily accessible to a Fair Work Inspector.

**Y.6.10** A compressed working week agreement may be terminated at any time by agreement between the employee and employer, or by the employee or employer giving 2 weeks' written notice. If not terminated earlier, a compressed working week agreement terminates on *[insert expiry date of Schedule]* 2021.

**Y.6.11** When a compressed working week agreement terminates, the employee must revert to

their prior working arrangements.

## Y.7 Annual leave at half pay agreement

**Y.7.1** Instead of an employee taking paid annual leave on full pay, the employee and their employer may agree to the employee taking twice as much leave on half pay.

**Y.7.2** The employer must record any annual leave at half pay agreement in writing and keep a copy as an employee record for 7 years in a form that is legible and readily accessible to a Fair Work Inspector.

Note: an annual leave at half pay agreement could be made by an exchange of emails between the employee and employer, or by other electronic means.

**Y.7.3** A period of leave under clause Y.7.1 must start before *[insert expiry date of Schedule]* 2021, but may end after that date.

**Example:** Instead of an employee taking one week's annual leave on full pay, the employee and their employer may agree to the employee taking 2 weeks' annual leave on half pay. In this example:

- the employee's pay for the 2 weeks' leave is the same as the pay the employee would have been entitled to for one week's leave on full pay (where one week's full pay includes leave loading under clause *[insert]—Annual Leave*); and
- one week of leave is deducted from the employee's annual leave accrual.
- 

## Y.8 Purchased leave agreement

**Y.8.1** At the request of a full-time or part-time employee, the employee and their employer may agree to the employee purchasing up to 30 days of paid leave in any 12 month period (the **purchase period**), with the employee's pay over the purchase period being reduced proportionately. Leave must be purchased in blocks of 5 days.

**Y.8.2** The reduction in the employee's pay under this award over the purchase period must equal the amount the employee would have been paid for working on the purchased leave days had the employee not purchased leave.

**Y.8.3** The employer must record a purchased leave agreement in writing and give a copy to the employee. The purchased leave agreement must include:

- (a) the number of days of leave purchased and the purchase period; and
- (b) the amount by which the employee's pay will be reduced over the purchase period on account of the purchased leave.

Note: a purchased leave agreement could be made by an exchange of emails between the employee and employer, or by other electronic means.

**Y.8.4** The employee's entitlement to purchased leave accrues progressively during the

**Commented [FWC20]:** Y.7 This is similar to the Schedule X model term inserted in 99 modern awards in a decision dated 8 April 2020 ([2020] FWCFB 1837). Minor wording adjustments have been made for consistency with other clauses in this Schedule.

**Commented [FWC21]:** The text in brackets will only be included in awards that provide for leave loading.

**Commented [FWC22]:** This clause is intended to provide flexibility for full-time and part-time employees to extend their access to leave. This type of provision may provide flexibility in a range of circumstances, for example a purchased leave agreement might allow a parent to take additional leave to supervise children who are unable to attend school due to school closure.

**Commented [FWC23]:** Y.8.1 The requirement for a minimum block of purchased leave is a feature of many purchased leave arrangements.

**Commented [FWC24]:** This clause has been drafted for employees whose daily pay does not vary, such as employees paid an annual salary.

Interested parties may wish to consider how purchased leave arrangements might be extended to employees who are paid on a different basis.

purchase period.

**Y.8.5** Purchased leave will count as service for all purposes (including the accrual of other paid and unpaid leave).

**Y.8.6** Purchased leave may be taken for a period agreed between the employee and the employer. The employer must not unreasonably refuse a request by the employee to take purchased leave.

**Y.8.7** An employee and employer may agree to the employee taking a period of purchased leave in advance before the employee has accrued an entitlement to the leave.

**Y.8.8** Upon termination of employment:

- (a) an employee must be paid for any untaken purchased leave the amount that would have been paid to the employee had the leave been taken;
- (b) if an employee has not accrued an entitlement to all of a period of purchased leave already taken in accordance with an agreement under clause Y.8.7, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of purchased leave taken in advance to which an entitlement has not been accrued; and
- (c) other entitlements on termination of employment must be calculated on the basis of the pay employee would have received had they not purchased leave.

**Y.8.9** The employer must keep a copy of a purchased leave agreement as an employee record for 7 years in a form that is legible and readily accessible to a Fair Work Inspector.

**Y.8.10** Leave must be purchased under clause Y.8 before *[insert expiry date of Schedule]* 2021, but purchased leave may be taken after that date.

**Y.9 Agreement to change the span of ordinary hours in a workplace or section of a workplace**

**Y.9.1** The span of ordinary hours of work under this award for the employees in a workplace or section of a workplace, may be changed for a specified period by up to one hour at each end of the span by agreement between the employer and at least 75% of the employees in the workplace or section of a workplace.

Example 1: If the span of ordinary hours under this award is 7 am–7 pm Monday to Friday, employees could agree to the span being changed to 6 am–7 pm Monday to Friday.

Example 2: If the span of ordinary hours under this award is 7 am–7 pm Monday to Friday, employees could agree to the span being changed to 6 am–8 pm Monday to Friday.

**Commented [FWC25]: Y.9** This clause seeks to provide flexibility in the span of ordinary hours that can be worked in a workplace or section of a workplace. In the context of COVID-19 restrictions, this sort of flexibility could be used to facilitate staggered start times, avoiding busy periods on public transport. A change in the span of hours under this provision requires agreement between the employer and at least 75% of employees in the workplace or section of a workplace.

**Commented [FWC26]: Y.9.1** The requirement that 75% of employees must agree to a change in the span of ordinary hours is based on Schedule I–Award Flexibility During the COVID-19 Pandemic from the *Clerks-Private Sector Award 2020*.

**Y.9.2** The agreement of employees in the workplace or section of a workplace concerned must be determined by a vote of the employees.

**Y.9.3** At least 7 days before the vote takes place the employer must notify each of the employees in the workplace or section of a workplace concerned in writing of:

- (a) the proposed change in their span of ordinary hours of work and the period in which it will apply;
- (b) the workplace or section of a workplace to which the proposed change will apply; and
- (c) the reasons for the proposed change.

Note: The employer could notify employees by email or by other electronic means.

**Y.9.4** Before the vote takes place the employer must consult with employees affected by the proposed change and their representatives (if any) in accordance with clause [insert]—Consultation about changes to rosters or hours.

**Y.9.5** If a change in the span of ordinary hours of work under clause Y.9 remains in effect 3 months after it was last agreed by a vote, any employee in the workplace or section of a workplace concerned may request a further vote. A further vote must be held within 7 days after the request. Unless 75% of the employees in the workplace or section of a workplace concerned agree in the further vote to the change in the span continuing in effect, the change in the span will terminate 14 days after the request.

**Y.9.6** An employer may terminate a change in the span of ordinary hours of work under clause Y.9 at any time by agreement with all of the employees in the workplace or section of a workplace concerned, or by the employer giving 2 weeks' written notice to the employees. If not terminated earlier, a change in the span of ordinary hours of work under clause Y.9 terminates on [insert expiry date of Schedule] 2021.

**Commented [FWC27]: Y.9.5** There are a number of different ways to provide for the agreed change to be revisited. The present drafting doesn't cap the 'specified period' but allows an employee to call for a new vote if the change remains in effect after 3 months. One alternative would be to cap the specified period in clause Y.9.1 at 3 months (so that a new vote would be required at least every 3 months). A further alternative would be not to cap the specified period, but to provide for an employee to call for a further vote if the employer proposes to extend the period.

## **Y.10 Agreement to share a reduction in working hours**

**Y.10.1** Clause Y.10 applies when an employer cannot usefully employ all of the full-time and part-time employees in a workplace or a section of a workplace.

**Commented [FWC28]: Y.10** This clause allows an employer and at least 75% of employees in a workplace to agree to share a reduction in working hours. An example of the circumstances that might lead to the use of this clause is a requirement to reduce normal operations as a result of the ongoing COVID-19 pandemic.

**Y.10.2** By agreement between an employer and at least 75% of the employees in a workplace or section of a workplace, the employer may for a specified period:

- (a) reduce the usual weekly ordinary hours of work of all of the employees in the workplace or section of a workplace by the same percentage, up to a maximum reduction of 25%; and
- (b) give effect to that reduction by reducing the days on which the employees work and/or their hours of work on those days.

**Commented [FWC29]: Y.10.2** The requirement that 75% of employees must agree to the shared reduction in hours is based on Schedule I—Award Flexibility During the COVID-19 Pandemic from the *Clerks-Private Sector Award 2020*.

**Commented [FWC30]: Y.10.2(b)** This clause provides for the implementation of an agreed reduction by changing employees' days, daily hours of work and times of work under this clause (rather than having to do so in accordance with other procedures and limitations under the award). As currently drafted the clause is intended to limit the roster changes that can be made – eg it is not intended that the employer could roster employees to work on days they would not usually work or to work increased daily hours on any day.

**Example 1:** If the full-time employees in the workplace usually work 7.6 hours per

day Monday to Friday, the employees could agree to working 7.6 hours per day Monday to Thursday, with their working times on Monday to Thursday being unchanged.

**Example 2:** If the full-time employees in the workplace usually work 7.6 hours per day Monday to Friday, the employees could agree to working 6 hours per day Monday to Friday and finishing work on those days 1.6 hours earlier than usual.

**Y.10.3** The reduction in the usual weekly ordinary hours of work of the employees must be given effect in such a way that, so far as reasonably practicable, the resulting percentage reduction in their weekly wages is the same for all of the employees in the workplace or section of the workplace.

**Y.10.4** Changes to employees' usual weekly ordinary hours of work, days of work and times of work agreed in accordance with clause Y.10 have effect despite clauses *[insert]* of this award.

**Y.10.5** The agreement of employees in the workplace or section of a workplace concerned must be determined by a vote of the employees.

**Y.10.6** At least 7 days before the vote takes place the employer must notify each of the employees in the workplace or section of a workplace concerned in writing of:

- (a) the workplace or section of the workplace to which the proposed reduction in usual weekly ordinary hours of work will apply, the percentage of the reduction and the period for which it will apply;
- (b) the reasons for the proposed reduction; and
- (c) the employee's proposed days of work and ordinary times of work while the reduction applies.

Note: The employer could notify employees by email or by other electronic means.

**Y.10.7** Before the vote takes place the employer must consult with employees affected by the proposed change and their representatives (if any) in accordance with clause *[insert]*—Consultation about changes to rosters or hours.

**Y.10.8** If a reduction in usual weekly ordinary hours of work under clause Y.10 remains in effect 3 months after it was last agreed by a vote, any employee in the workplace or section of a workplace concerned may request a further vote. A further vote must be held within 7 days after the request. Unless 75% of the employees in the workplace or section of a workplace concerned agree in the further vote to the reduction in usual weekly ordinary hours continuing in effect, the reduction will terminate 14 days after the request.

**Y.10.9** While a reduction in usual weekly ordinary hours of work under clause Y.10 is in effect, an employee's leave accruals and other relevant accruals, and all entitlements on termination of employment, must continue to be based on the employee's usual weekly ordinary hours of work before the reduction.

**Commented [FWC31]: Y.10.4** This subclause would be tailored on an award by award basis to enable the agreed changes to have effect without the need to comply with other specified provisions of the award.

**Commented [FWC32]: Y.10.8** There are a number of different ways to provide for the agreed change to be revisited. The present drafting doesn't cap the 'specified period' but allows an employee to call for a new vote if the change remains in effect after 3 months. One alternative would be to cap the specified period in **clause Y.10.2** at 3 months (so that a new vote would be required at least every 3 months). A further alternative would be not to cap the specified period, but to provide for an employee to call for a further vote if the employer proposes to extend the period.

**Commented [FWC33]: Y.10.9** This clause is based on cl.1.2.2(g) in the *Clerks-Private Sector Award 2020*.

**Y.10.10** An employer may terminate a reduction in usual weekly ordinary hours of work under clause Y.10 at any time by agreement with all of the employees in the workplace or section of a workplace concerned, or by the employer giving 2 weeks' written notice to the employees. If not terminated earlier, a reduction in usual weekly ordinary hours of work under clause Y.10 terminates on [insert expiry date of Schedule] 2021.

**Y.10.11** When a reduction in usual weekly ordinary hours of work under clause Y.10 terminates, the weekly ordinary hours of work, days of work and times of work of the employees in the workplace or section of a workplace concerned revert to those that applied before any change was made under clause Y.10.

### **Y.11 Direction to perform all duties within skill and competency**

**Y.11.1** As directed by the employer, an employee will perform all duties that are within the employee's skill and competency regardless of their classification under clause [insert]—Classifications, provided that:

- (a) the duties are safe; and
- (b) the employee is licensed and qualified to perform the duties.

**Y.11.2** An employer must not reduce an employee's pay because in accordance with a direction under clause Y.11 the employee performs duties carrying a lower rate than the employee's usual classification.

**Y.11.3** Clause [insert]—Higher duties applies where in accordance with a direction under clause Y.11 an employee performs duties carrying a higher rate than the employee's usual classification.

**Y.11.4** A direction under clause Y.11 is of no effect if it is unreasonable in all of the circumstances.

### **Y.12 Direction to work at a different workplace**

**Y.12.1** An employer may direct an employee to perform duties at a place that is different from the employee's usual place of work, [including the employee's home], provided that:

- (a) the place is suitable for the employee's duties;
- (b) the place does not require the employee to travel a distance that is unreasonable in all of the circumstances; and
- (c) the performance of the employee's duties at the place is safe and reasonably within the scope of the employer's business operations.

**Y.12.2** Before giving any employee a direction under clause Y.12 the employer must:

**Commented [FWC34]:** Y.11.1 This clause is based on the wording of clause 1.2.1 that was inserted into the *Clerks-Private Sector Award 2020* in March 2020. Also see s.789GE of the Act.

**Commented [FWC35]:** Y.11.3 This clause may need to be tailored on an award specific basis.

**Commented [FWC36]:** This clause is based on s.789FG of the Act

- (a) give the employee at least 7 days' notice in writing of the employer's intention to give the direction; and
- (b) consult the employee and the employee's representative (if any) about the direction.

Note: the employer could give notice in writing by email or other electronic means.

**Y.12.3** A direction under clause Y.12 is of no effect if:

- (a) the employer does not comply with the notice and consultation requirements under clause Y.12.2; or
- (b) the direction is unreasonable in all of the circumstances.

**Y.12.5** If not terminated earlier, a direction under clause Y.12 terminates on [*insert expiry date of Schedule*] 2021.

**Y.12.6** When a direction under clause Y.12 terminates, the employee must revert to their prior working arrangements.

### **Y.13 Direction to stagger start and finish times**

**Y.13.1** Clause Y.13 applies if an employer proposes to stagger the starting and finishing times of employees in a workplace so as to comply with recommendations of or measures imposed by government or medical authorities in relation to the COVID-19 pandemic.

**Example 1:** An employer may propose to stagger starting and finishing times so as to comply with recommendations of health authorities to avoid crowding on public transport.

**Example 2:** An employer may propose to stagger starting and finishing times so as to comply with recommendations of WHS authorities to limit the number of employees who are waiting for or using lifts to access or leave the workplace at the same time.

**Y.13.2** Subject to clause Y.13.5, the employer may direct the employees for a specified period of up to [2 months] to start and finish work up to [one hour] earlier or [one hour] later than their usual starting and finishing times.

**Example:** If employees usually start work at 8.30 am and finish work at 5.00 pm, the employer could break the employees into 9 groups with the first group starting at 7.30 am and finishing at 4.00 pm and each other group starting and finishing 15 minutes after the previous one.

**Y.13.3** A direction under clause Y.13 has effect despite any other provision of this award. An employee will not be entitled to any additional payment under this award as a result of starting and finishing work at an earlier or later time in accordance with a direction under clause Y.13.

**Y.13.4** Before giving an employee a direction under clause Y.13 the employer must:

**Commented [FWC37]:** Y.13.3 The exemptions from compliance with other provisions of the award and from additional payment under the award would need to be tailored to the particular award concerned.

- (a) give the employee at least 7 days' notice in writing of the following:
  - (i) that the employer proposes to give the employee a direction under clause Y.13;
  - (ii) the reasons why the employer proposes to stagger starting and finishing times in the workplace;
  - (iii) how the employer proposes to stagger starting and finishing times in the workplace and the period for which the changes will apply; and
  - (iv) the change to the employee's starting and finishing times under the proposed direction;
- (b) consult with the employee and their representative (if any) in accordance with clause [insert]—Consultation about changes to rosters or hours; and
- (c) so far as reasonably practicable accommodate any preference of the employee as to the change to their starting and finishing times.

**Note:** the employer could give notice in writing by email or other electronic means.

**Y.13.5** A direction under clause Y.13 is of no effect if:

- (a) the employer does not comply with all of the requirements under clause Y.13.4; or
- (b) the direction is unreasonable in all of the circumstances.

**Example 1:** A direction may be unreasonable because it is not reasonably directed to compliance with relevant recommendations of or measures imposed by government or health authorities.

**Example 2:** A direction may be unreasonable because of its impact on the employee's caring responsibilities.

**Y.13.6** The employer must keep a copy of a direction under clause Y.13 as an employee record for 7 years in a form that is legible and readily accessible to a Fair Work Inspector

**Y.13.7** The employer may terminate a direction under clause Y.13 at any time by agreement with the employee concerned or by the employer giving 2 weeks' written notice to the employee. If not terminated earlier, a direction under clause Y.13 terminates on [insert expiry date of Schedule] 2021.

**Y.13.8** When a direction under clause Y.13 terminates, the starting and finishing times of the employee concerned must revert to those that applied before any direction was given under clause Y.13.

NOTE 1: A employee has a workplace right under section 341(1)(a) of the Act if the employee is entitled to the benefit of an arrangement under Schedule Y or has a role or responsibility in an arrangement under Schedule Y.

NOTE 2: Under section 340(1) of the Act, an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the Act, an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3: Under section 343(1) of the Act, a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.

**Commented [FWC38]:** These notes are similar to the notes inserted into the Schedule X model term in a decision dated 8 April 2020 ([2020] FWC/CFB 1837).