



FairWork
Commission

STATEMENT

JUSTICE ROSS, PRESIDENT

MELBOURNE, 31 MARCH 2020

The Fair Work Commission's coronavirus (COVID-19) response

[1] This statement sets out how the Fair Work Commission is responding to the Coronavirus (COVID-19) pandemic.

[2] COVID-19 is causing significant disruptions to Australian workplaces. Our ongoing focus is to ensure a safe environment for our clients and staff so that we can continue to deliver services to the community. Service continuity relies heavily on our workforce being healthy and available. We have introduced social distancing measures to keep our workforce safe. Most Members and staff are now working exclusively remotely.

Urgent applications related to the COVID-19 pandemic

[3] 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.

Awards varied in response to COVID-19

[4] The Commission has received 3 urgent applications to vary awards in response to the COVID-19 pandemic.

[5] On 24 March 2020 the Australian Hotels Association (AHA) made an application to vary the *Hospitality Industry (General) Award 2010* (the Hospitality award) to deal with the consequences of COVID-19. The application was supported by the United Workers Union (UWU) and reflected an agreement between the AHA and UWU. The application was supported by the Commonwealth Minister for Industrial Relations. The Hospitality award was varied to insert Schedule L—Award flexibility during the COVID-19 Pandemic in a decision issued in transcript on 24 March 2020. A Full Bench published reasons for its decision on 25 March 2020¹. A [summary of this decision](#) was published on the same day.

[6] The award variations commenced operation on 24 March 2020 and will operate until 30 June 2020. More [information about the variation to the Hospitality award](#) is available on the Commission's website.

[7] On 25 March 2020 the Australian Chambers of Commerce and Industry (ACCI) and the Australian Industry Group (Ai Group) made a joint application to vary the *Clerks – Private Sector Award 2010* (the Clerks award). The application was supported by the Australian Services Union (ASU), the Australian Council of Trade Unions (ACTU) and the Commonwealth Minister for Industrial Relations.

[8] A statement² was issued on 26 March 2020 and submissions on the joint application were invited. At a hearing on 28 March 2020, a Full Bench approved the application and varied the Clerks award to insert a new Schedule I—Award flexibility during the COVID-19 Pandemic in a decision issued on 28 March 2020.³ A [summary of the decision](#) was published on the same day.

[9] The award variations commenced operation on 28 March 2020 and will operate until 30 June 2020. More [information about the variation to the Clerks award](#) is available on the Commission's website.

[10] On 30 March 2020, Restaurant & Catering Industrial (RCI) lodged an urgent application to vary the *Restaurant Industry Award 2010* (the Restaurant award).⁴ The application is supported by the UWU and ACTU. The Commonwealth Minister for Industrial Relations has filed a [submission](#) in support of the application.

[11] A statement⁵ was issued on 30 March 2020 expressing a provisional view that the variation of the Restaurant award as proposed in the application is necessary to achieve the modern awards objective. Submissions either supporting or opposing the application and the provisional view expressed in the statement were to be filed by 4pm today. If no submissions are filed opposing the application or their provisional view, the Full Bench has indicated that it will grant the application. No such submissions have been filed, and the decision by the Full Bench will be issued shortly.

Varying enterprise agreements in response to COVID-19

[12] The Commission has received a number of enquiries from parties about how to urgently vary existing agreements. To assist parties with these applications information has been made available on the Commission's [website](#) (including a [factsheet](#) about making an application to vary an agreement) and a dedicated telephone support line has been set up. Parties can call 03 8656 4548 or email member.assist@fwc.gov.au with any agreement-related enquiries.

[13] The dedicated email address setup for parties making urgent COVID-19 applications (COVID19Applications@fwc.gov.au) can also be used for applications to vary agreements. These applications will be given absolute priority. In order to provide some early clarity around any issues of 'exceptional circumstances' or 'public interest', I will refer one of the first of these applications to a Full Bench for an urgent hearing.

Rule changes as a consequence of COVID-19

[14] The *Fair Work Commission Rules 2013* provide that statutory declarations must be physically signed in the presence of an authorised witness. The Commission does not want people to risk face-to-face contact during the COVID-19 pandemic in order to have statutory declarations signed in the presence of an authorised witness. I will shortly be publishing a proposed amendment to the Rules regarding statutory declarations in order to minimise this risk. More information about the proposed rule change will be published on the Commission's website shortly.

[15] As an interim measure, a person who is having trouble getting a statutory declaration witnessed as a consequence of COVID-19 can:

- sign the form and lodge it as a declaration without having it witnessed, and
- ask the Member dealing with the matter to dispense with the requirement for a statutory declaration to be lodged, pursuant to rule 6 of the Rules.

[16] The Member will consider the circumstances and decide whether to accept the signed declaration.

[17] Different considerations apply in relation to applications for WHS entry permits (Form F42B), which must still be lodged as statutory declarations. This form is in a different category to the others, because the WHS Act (rather than just the Commission Rules) requires a statutory declaration to be lodged (see WHS Act s.131(2)).

Variations to proceedings in major cases

[18] The Commission has decided to vary the timetables for some current major cases in response to the COVID-19 pandemic. The timetable for the Annual Wage Review 2019-20 has been varied.⁶ The timetable and process for finalisation of tranche 3 exposure drafts in the 4 yearly review of modern awards has also been varied.⁷ The directions in relation to the outstanding issues in the review of the *Aircraft Cabin Crew Award 2010* have also been vacated with the consent of all parties.

Protected action ballots

[19] The Commission and the Australian Electoral Commission (AEC) are in regular communication about the potential impacts of COVID-19 on the capacity of the AEC to conduct protected action ballots.

[20] A number of protected action ballot orders (PABO) are currently in operation. Applicants for a PABO or ballot agents (including the AEC) may apply to the Commission to vary a PABO in accordance with s.447 of the FW Act, to extend the date by which a ballot closes. An applicant for a PABO may apply to the FWC to revoke a PABO at any time before the ballot closes in accordance with s.448 of the FW Act.

[21] Changes in the availability of staff to attend AEC offices may affect the practical logistics for conducting ballots and declaring results. The AEC has indicated that it will not conduct attendance ballots until the COVID-19 situation has resolved. Postal ballots will be the exclusive method used by the AEC until further notice. The AEC has requested that when making an order, the Commission provide for a period of 30 working days, rather than the more usual 20 working days, for the ballot to close.

[22] On 24 March 2020, the AEC made 24 urgent applications under s.447 of the FW Act to vary protected action ballot orders. On 26 March 2020 Deputy President Gostencnik varied 8 of those protected action ballot orders. The Deputy President varied a further 10 of those protected action ballot orders on 27 March 2020. The remaining applications are being dealt with as a priority.

[23] In light of the AEC's advice about the conduct of ballots, in dealing with any protected action ballot applications the Commission will consider extended timeframes by which ballots are to close.

[24] We will continue to monitor the potential impacts of COVID-19 on the capacity of the AEC to conduct protected action ballots.

The Commission is still operating but counters are closed

[25] The Commission is still operating between 9am–5pm in all States and Territories. Last week the Commission closed its public counters for the safety of our clients and staff. Clients should not attend any of the Commission's offices unless a Commission Member specifically requests them to.

[26] We are no longer accepting hard copy applications in-person or by post. Clients can still lodge applications using our online lodgment services, or by email or fax. Client's having trouble lodging applications can call 1300 799 675 for assistance.

Commission Members and staff working remotely

[27] The Commission's IT team have significantly increased our capabilities to support a predominantly remote workforce. This represents a significant change in the Commission's operations but we are confident it will not significantly impact on the delivery of services. We have tested our capabilities thoroughly and provided training to Members and staff. The majority of Members and staff are now working exclusively from home.

[28] The Commission will conduct hearings and conferences by telephone or video-conference wherever possible. This applies to cases that are already scheduled and future proceedings. The Commission will contact parties to reschedule any conferences and hearings that had previously been scheduled for in-person proceedings.

[29] The Commission will also deal with some cases on the papers and defer cases where it is not possible to proceed by telephone or video-conference.

COVID-19 updates & advice

[30] We have created a [COVID-19 updates & advice webpage](#) to provide clients with up-to-date information about changes to our operations as a result of the pandemic. Clients with enquiries can also contact the Commission on 1300 799 675 or email us. Contact details for all [Commission offices](#) are on our website. We have included a link to the Fair Work Ombudsman website to direct clients to information about workplace entitlements and COVID-19.

[31] The Commission has also published on our website, [information on the measures undertaken](#) by the Australian Government and various State and Territory Governments.

Collaboration and innovation

[32] The Commission is committed to working with other courts and tribunals to share experiences and identify innovative solutions to the future challenges that the pandemic will

present. We are in the final stages of developing an online innovation hub for justice institutions to exchange ideas, share resources and collaborate on joint solutions to challenges associated with COVID-19 and other emerging challenges.

Piloting technology

[33] The Commission is in the early stages of a pilot that will assess the efficacy of conducting Full Bench proceedings via a remote videoconference platform. The pilot will include all Members of the bench, parties and their representatives attending proceedings from multiple locations across the country, and most often their homes. Participants will also be asked to attend the proceedings through a wide range of devices, including iOS and Android smart phones and tablets and laptops (PC and Apple).

PRESIDENT

Printed by authority of the Commonwealth Government Printer

¹ [\[2020\] FWCFB 1574](#)

² [\[2020\] FWCFB 1630](#)

³ [\[2020\] FWCFB 1690](#)

⁴ [RCI application](#) to vary the Restaurant award, 30 March 2020.

⁵ [\[2020\] FWCFB 1715](#)

⁶ [\[2020\] FWC 1544](#)

⁷ [\[2020\] FWCFB 1539](#)