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Award Modernisation Team  
Fair Work Commission  
11 Exhibition St  
Melbourne VIC 3000

Dear Sir / Madam

**AM2014/233: 4-yearly review of the Legal Services Award 2010**

We act for a group of 21 major law firms that are interested parties in the *Legal Services Award 2010 (LS Award)*. A list of our clients is set out at **Attachment A** to this correspondence (hereinafter referred to as the **Firms**).

**Proposed amalgamation of the *Legal Services Award 2010* and the *Clerks – Private Sector Award 2010***

On 16 June 2014, the Commission published a guide to the award stage which, amongst other things, identified research undertaken by staff of the Commission that looked at the conformity between certain awards. In that review, the Commission identified a number of modern awards that it considered could potentially be combined. In that exercise, the Commission identified the *Clerks – Private Sector Award 2010 (Clerks Award)* and the LS Award as modern awards which should be examined in due course to determine whether it would be appropriate to combine them.

Upon undertaking a preliminary review of the Clerks Award and the LS Award, on balance there is not support from the Firms for the amalgamation of the LS Award and the Clerks Award. There is a longstanding history of legal services awards across the States and Territories that reflect the unique nature of work that is performed by administrative and other support staff in the legal sector that is not reflective of administrative and clerical work performed in the broader private sector. In particular, the Firms have identified that there may be significant challenges in translating classifications provided under the LS Award to the classifications provided under the Clerks Award and wish to have the opportunity to undertake further analysis regarding the potential impact of amalgamating these modern awards.

Should this be a matter still within the consideration of the Commission, the Firms seek an opportunity to undertake the further necessary analysis and to be heard further with a view to providing detailed submissions as part of this review.

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**Proposed variations to the *Legal Services Award 2010***

Please see **Attachment B** to this correspondence for a summary of the proposed variations that the Firms intend to pursue as part of the Group 3 modern award review.

We would be pleased to provide the Commission with further detailed submissions in support of the variations proposed in due course.

Yours sincerely

A handwritten signature in black ink that reads "Nick Ruskin". The signature is written in a cursive, slightly slanted style.

**Nick Ruskin**  
**Partner**

## **Attachment A**

### **Firms represented under this submission**

1. Russell Kennedy
2. Norton Rose Fulbright
3. Arnold Bloch Leibler
4. Hall & Wilcox
5. Clayton Utz
6. Thomson Geer
7. Corrs Chambers Westgarth
8. Maddocks
9. DLA Piper
10. Allen & Overy
11. Piper Alderman
12. Dibbs Barker
13. Ashurst
14. Herbert Smith Freehills
15. Minter Ellison
16. Allens
17. Gilbert & Tobin
18. Lander & Rogers
19. King & Wood Mallesons
20. Davies Collison Cave
21. Gadens

## Attachment B

### Proposed variations to the *Legal Services Award 2010*

1. That the definition of " law graduate" as prescribed at clause 3 is varied as follows:

**law graduate** means an employee who has completed a qualification in law—lawyer not admitted to practice but who and is undertaking a period of training within a law firm with the view to being in satisfaction of requirements prescribed under relevant legislation in order to be admitted to practice as an Australian lawyer (whether or not such training is finalised before or after the lawyer is actually admitted to practice), but shall not include a lawyer that is admitted to practice in a foreign jurisdiction

2. That clause 10.5(c) is varied as follows:

#### **10.5 Casual employment**

...

- (c) A casual employee must be paid for a minimum of ~~four~~three hours for each day that the casual employee is engaged.

3. That clause 24.1(a) is varied as follows:

#### **24.1 Weekly hours of work**

- (a) The ordinary hours of work for day workers are to be an average of 38 per week but not exceeding 152 hours in 28 days.

(b) By agreement between an employer and an employee, the employee's ordinary hours of work may be arranged on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed 12 months.

~~(b)~~(c) The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday.

~~(e)~~(d) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 7.00 am to 6.30 pm, Monday to Friday. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between the employer and the majority of employees concerned.

~~(d)~~(e) Any authorised work that is required or requested by an employer to be performed outside the spread of hours is to be paid for at overtime rates. However any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the workplace in a state of readiness for other employees to start work is to be regarded as part of the 38 ordinary hours of work.

~~(e)~~(f) **Rostered days off**

Arrangements for rostered days off may be reached between an employee and an employer. Such arrangements will outline the method of accruing time towards a rostered day off as well as an agreed method of accumulating and taking rostered days off.

4. That clause 28.1 is varied as follows:

**28. Daylight saving**

28.1 *Where by reason of State legislation, summer time is prescribed to commence or end during the course of an employee's shift, the employee will be paid for the number of hours actually worked by the employee, and not in accordance with the apparent length of the shift as calculated with regard to the shift start and finish times. ~~as being in advance of the standard time in that State the length of any shift:~~*

~~(a) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period; or~~

~~(b) commencing on or before the time prescribed by such legislation for the termination of a summer time period;~~

~~will be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end of the shift. The time of the clock in each case is to be set to the time fixed by the relevant State legislation.~~

5. That clause 30.1 is varied as follows:

**30.1 Annual salary instead of award provisions**

(a) *An employer may pay an employee an annual salary in satisfaction of any or all of the following provisions of the award:*

*(i) clause 14—Minimum wages;*

*(ii) clause 19—Allowances;*

*(iii) clause 31—Shiftwork allowances and rates;*

~~*(iii)*~~*(iv) clause 34—Overtime and penalty rates; and*

~~*(iv)*~~*(v) clause 35.3—Annual leave loading.*

*(b) Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award will be satisfied by payment of the annual salary.*

6. That clause 33.2(a) is varied as follows:

**33.2 Rest break**

(a) *All employees will be allowed two rest intervals, subject to the reasonable business needs of the practice, on each day as follows:*

*(i) the first of 10 minutes to be allowed between the time of commencing work and the usual meal interval; and*

*(ii) the second of 10 minutes to be allowed between the usual meal interval and the time of ceasing work for the day.*

7. That clause 34.5 is varied as follows:

**34.5 Time off instead of payment for overtime**

- (a) *An employer or employee may elect, ~~with the consent of the employer,~~ that the employee will ~~to~~ take time off instead of receiving payment for authorised overtime, to be taken at a time or times agreed ~~with~~ between the employer and the employee. Such time off must be taken within 12 months or within such shorter period that is agreed between the employer and employee.*
- (b) *Overtime taken as time off during ordinary time hours will be taken at the ordinary time rate; that is, an hour for each hour worked.*
- (c) *If, either the employer or employee, having elected ~~to~~ that the employee will take time ~~as leave and the leave off~~ instead of payment and the time off is not taken for whatever reason, payment for the time accrued at overtime rates will be made at the expiry of the ~~12 month~~ relevant period for taking the time off as provided under clause 34.5(a), or on termination.*
- (d) *The employer must keep accurate records of time accrued as time off instead of payment for overtime.*

8. That clause 39 is deleted and replaced with the following:

**39. Special conditions of employment—Law graduate**

- 39.1 *A law graduate is entitled to paid study leave to attend a course of instruction, and prepare for and attend examinations, that relate to the practical legal training required for their admission to practise as an Australian lawyer.*
- 39.2 *Paid study leave should be taken at a time agreed with the employer and may not, unless otherwise agreed between the employer and the law graduate, exceed a total of 20 days in any 12 month period for the purposes of attending any course of instruction required to complete practical legal training, including one day to prepare for each examination in addition to the time reasonably required to attend the examination.*