

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2014/233 – Legal Services Award 2010

**Applicant:** Russell Kennedy & Ors

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### RESPONSE TO 14 DECEMBER 2016 DIRECTIONS

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1. The Applicant is a group of 21 law firms referred to in AM2014/233 as "Russell Kennedy & Ors" or "the Firms" (**Firms**).
2. In response to the Direction 6 of the Directions issued by DP Clancy on 14 December 2016 with respect to outstanding variations that the Firms submit should be made the *Legal Services Award 2010* (**LS Award**), the Firms confirm that they do not wish to be heard at an oral hearing.
3. With respect to the 30 January 2017 submissions filed by the ASU, the Firms wish to note the following:
  - (a) The ASU has not made any submissions in opposition to the proposal that clause 24.1 of the LS Award (clause 8.1 of the Revised Exposure Draft) regarding the proposed requirement that overtime must be authorised. Accordingly, the Firms submit that the proposed variation may be adopted;
  - (b) As noted at paragraph 19 of their 20 January 2017 submissions, the Firms do not seek to diminish the rest break entitlements of employees covered by the LS Award. The proposed variation will not impact upon the remuneration of employees covered by the LS Award, as the ASU would suggest. Indeed, the Firms say that the variation would benefit employees covered by the LS Award in that the employees may take their rest breaks at times that are convenient to them, as well as to their firm;
  - (c) The Firms reject the proposition that the proposed variation may lead to disputation around what constitutes PLT. As outlined in our 29 August 2016 correspondence, the *Legal Profession Uniform Admission Rules 2015* (**Admission Rules**) are statutory rules which are prescriptive as to the PLT that is required for a law graduate to be admitted to practise. There can accordingly be no question as to what types of study relate to PLT and attract an entitlement to be released from duties without deduction of pay, and what types of study do not.

As described in the Firms' 29 August 2016 correspondence, the nature of PLT is that law graduates do not necessarily complete discrete subjects of study.

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Rather, their workplace or College training must cover a range of skills and practices areas across a more fluid course of study. To prescribe that study leave be granted as an entitlement that is tied to an amount of leave for each subject accordingly does not reflect the manner of delivery of this training. Essentially, law graduates must, in accordance with the Admission Rules, demonstrate through a comprehensive method of assessment, an appropriate understanding of a competence in four skills, three compulsory practice areas (civil litigation, commercial and corporate and property law), two of seven optional practice areas and the values training concerning ethics and professional responsibility.

The Firms' proposed variation is accordingly directed at ensuring that the special conditions for law graduates are consistent with these new statutorily regulated PLT requirements—it is not about diminishing their paid study leave entitlements;

- (d) The Firms object to the statement that employees covered by the LS Award "are not remunerated terribly well" (paragraph 9 of the ASU's 30 January 2017 submissions). As set out in the Firms' evidence to the Commission's transitional review of the LS Award, the majority of employees covered by the LS Award are paid well in excess of the minimum weekly salary, as the market demands it<sup>1</sup>. While not all employees covered by the LS Award will necessarily be paid above the minimum weekly wages set out therein, these minimum rates of pay are generally equivalent to the corresponding minimum weekly wages provided under the *Clerks—Private Sector Award 2010*, an award which already provides for a number of the flexibilities that the Firms' seek under the LS Award.

**7 February 2017**

**K&L Gates  
Lawyers for Russell Kennedy & ors**

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<sup>1</sup> See in particular paragraphs 45 to 48 of the 9 October 2012 submissions of Allens Linklaters & Ors, on the Fair Work Commission website at: [https://www.fwc.gov.au/documents/documents/awardmod/review/am2012131\\_repliesub\\_allens&ors.pdf](https://www.fwc.gov.au/documents/documents/awardmod/review/am2012131_repliesub_allens&ors.pdf)