

From: Sweatman, Katie [mailto:Katie.Sweatman@klgates.com]
Sent: Tuesday, 14 June 2016 3:36 PM
To: AMOD
Cc: Chambers - Hatcher VP; Nick Ruskin; jcooney@asu.asn.au; Michael Rizzo (mrizzo@asu.asn.au)
Subject: AM2014/197 - Variation of casual minimum engagement under the Legal Services Award 2010 [MID-MIDDOCS.FID2091960]

Dear Sir / Madam

AM2014/197 - Variation of casual minimum engagement under the Legal Services Award 2010

We refer to the casual employment common issue, to which our proposed variation of casual minimum engagement under the *Legal Services Award 2010* has been referred, under Part 5 – "Other casual and part time engagement issues".

Please see **attached** our outline of submissions and supporting witness statement, noting our respectful request for an extension of time for the filing of these documents set out in the introduction to the outline of submissions.

Please contact us if you have any questions or wish to clarify anything regarding these materials, otherwise I confirm that we will be present at the mention listed in this matter for this Thursday, 16 June 2016 before VP Hatcher and would be pleased to address any questions regarding this matter then.

Kind regards



Katie Sweatman
Senior Associate
Melbourne Office Pro Bono Co-ordinator
K&L Gates
Level 25 South Tower, 525 Collins Street
Melbourne VIC 3000, Australia
Phone: +61 3 9640 4297
Fax: +61 3 9205 2055
Mobile: +61 478 486 758
katie.sweatman@klgates.com
www.klgates.com



This office is located on the land of the Wurundjeri people of the Kulin Nation

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/197

Applicant: Russell Kennedy & ors

RESPONDENT'S OUTLINE OF SUBMISSIONS

Introduction

1. The Applicant is a group of 21 law firms referred to in AM2014/233 as "Russell Kennedy & Ors".
2. The Applicant seeks a variation to the *Legal Services Award 2010 (LS Award)* such that clause 10.5(c) of the LS Award 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. The clause in respect of which the variation is sought corresponds with clause 6.5(c) of the Exposure Draft *Legal Services Award 2015* published by the Commission on 18 December 2015.
4. The proposed variation was referred to this Full Bench in AM2014/197 and will be heard on 15 July 2016 as one of the "Other casual and part time engagement issues" being considered by the Full Bench as set out in part 5 of the Amended Directions issued by VP Hatcher on 9 June 2016.
5. The Applicant concedes that it misapprehended how this matter would be dealt with by the Commission as part of the casual and part time employment common issue and acknowledges that it has not met previous directions issued by the Commission in respect to submissions and supporting evidence.
6. The Applicant accordingly respectfully requests an extension of time for the filing of its submissions in respect of this variation which is being considered by this Full Bench in AM2014/197.
7. The Applicant refers to and relies upon the statement of evidence of Ms Sheila Roberts, National Manager, Systems Performance & Reward at Norton Rose Fulbright Australia.

Lodged by K&L Gates for Russell Kennedy & ors	Telephone: 03 9640 4297
Address for Service: Level 25, South Tower 525 Collins St MELBOURNE VIC 3000	Fax: 03 9205 2055 Email: katie.sweatman@klgates.com

Effect of the proposed variation on law students

8. The Applicant submits that a significant proportion of those employees who may be engaged as casual employees are law students who are employed in paralegal and other support roles in law firms while continuing their law studies.
9. In the matter of *National Retail Association Limited* [2011] FWA 3777 in respect to the reduction of the minimum engagement of casual employees under the *General Retail Industry Award 2010*, VP Watson stated:

[38] The retail sector is the most important industry for school students because it provides a large proportion of employment opportunities for this class of employees. It is clear that the employment opportunities in the industry provide significant benefits for the employees, not only in an immediate sense, but also by equipping them with skills and networks to assist in obtaining, and succeeding in, employment in the future.
10. The decision of VP Watson, to reduce the minimum engagement for this and a number of other reasons, was upheld by the Full Bench in the matter of *Shop, Distributive and Allied Employees Association* [2011] FWAFB 6251, and judicial review of that decision refused by the Federal Court in the matter of *Shop, Distributive and Allied Employees Association v National Retail Association (No 2)* [2012] FCA 480 (11 May 2012).
11. The Applicant contends that similar reasoning may be applied in respect of its proposed variation to the minimum engagement of casual employees in that:
 - (a) a significant proportion of casual paralegal and support staff covered by the LS Award are law students;
 - (b) employment opportunities for law students in law firms provide significant benefits for the employees, not only in an immediate sense, but also by equipping them with skills and networks to assist in obtaining, and succeeding in, employment in the future.
12. The Applicant submits that the current minimum engagement of four weeks unreasonably limits the opportunities to offer law students casual shifts that fit within their university schedule.
13. The Applicant further submits that it is preferable for afternoon shifts for paralegal and support staff to be able to be scheduled from 2.00pm (to take into account the lunch break commonly taken in law firms between 1.00pm and 2.00pm) to 5.00pm. In this regard, the Applicant submits that the four hour minimum engagement requirement unreasonably limits the opportunity to offer such shifts to casual employees, including law students.

Casual minimum engagement under the *Clerks – Private Sector Award 2010*

14. The *Clerks – Private Sector Award 2010* (**Clerks Award**) covers clerical and administrative employees and may be said to have some alignment with the LS Award.
15. The Clerks Award provides at clause 12.4:

12.4 *Casual employees are entitled to a minimum payment of **three** hours' work at the appropriate rate.*
16. The proposed variation would accordingly bring the period of minimum engagement in line with the minimum engagement for clerical and administrative employees in other industries.

Minimum engagement under pre-reform awards that preceded the LS Award

17. The pre-reform awards that preceded the LS Award provided for the minimum engagement of casual employees as outlined following:

State	Award	Relevant provision
Victoria	<i>Victorian Legal Professional, Clerical and Administrative Employees Award 2004 (AP831581)</i>	Clause 14.2: A casual employee will be engaged by the prescribed rate for the classification as set out in clause 19 - Salaries, plus an additional loading of 25%. A casual employee will be paid for a minimum of four hours in respect of each day that the casual employee is engaged
New South Wales	<i>Clerical and Administrative Employees Legal Industry (State) Award (AN120675)</i>	No minimum engagement for casual employees
South Australia	<i>Salaried Lawyers Award (AN150135)</i>	No minimum engagement for casual employees Nb: this award did not cover paralegals and administrative employees who would be the group primarily affected by the proposed variation The <i>Clerks (SA) Award (AN150039)</i> covering administrative staff in law firms also did not provide for any minimum engagement for casual employees
Tasmania	<i>Barristers and Solicitors Award (AN170008)</i>	No minimum engagement for casual employees
Queensland	<i>Legal Aid Queensland Employees' Award - State 2003 (AN140156)</i>	Clause 4.6.1: A Casual Employee must be paid an additional 23% of the ordinary Award rates of pay applying to the class of work for which such Employee is engaged. Each engagement stands alone, with a minimum payment as for 2 hours in respect to each engagement.

18. In the drafting of the LS Award, the Victorian position has been adopted, which has imposed a minimum engagement where none operated previously in any other State or Territory, save for Queensland. In Queensland, the minimum engagement for casual employees that operated previously was doubled under the LS Award.

19. The Applicant does not propose to remove the minimum engagement to reflect the position that operated in a majority of States prior to the commencement of the LS Award, rather it seeks a variation of the minimum engagement to a more workable period of three hours.

14 June 2016

K&L Gates
Lawyers for the Russell Kennedy & ors

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/197

Applicant: Russell Kennedy & ors

WITNESS STATEMENT OF SHEILA ROBERTS

I, Sheila Roberts, National Manager, Systems Performance & Reward at Norton Rose Fulbright Australia, in the State of STATE as follows:

1. I am employed by Norton Rose Fulbright Australia, one of 21 law firms that are seeking variations to the *Legal Services Award 2010 (Law Firms)*. The Law Firms have been referred to in the review of the *Legal Services Award 2010 (LS Award)* in matter number AM2014/233 as "the law firms" and also as "Russell Kennedy & Ors".
2. I am authorised by the Law Firms, to make this witness statement on their behalf.
3. I make this statement from my own knowledge unless I indicate to the contrary.

Background

4. In my role as National Manager, Systems Performance & Reward, I am responsible for, amongst other things:
 - (a) managing the firm's annual and mid-year performance review for all legal and non-legal staff;
 - (b) managing the firm's annual remuneration review for all legal and non-legal staff including off cycle reviews, benchmarking salaries and advising on remuneration generally;
 - (c) managing the firm's incentive plans for legal staff and discretionary bonuses for non-legal staff;
 - (d) coaching of legal staff on the partnership track;
 - (e) managing global and domestic mobility for the Australian offices.
5. Prior to my employment with Norton Rose Fulbright Australia, I worked as a self-employed market analyst, and prior to that worked as a Remuneration Resourcing & Benefits Manager for Mallesons Stephen Jaques (now King & Wood Mallesons) for a period of four years.

Lodged by K&L Gates for the Applicant	Telephone: 03 9640 4297
Address for Service: Level 25, South Tower 525 Collins St MELBOURNE VIC 3000	Fax: 03 9205 2055 Email: katie.sweatman@klgates.com

6. Prior to working at Mallesons Stephen Jaques, I was employed at predecessor law firms to Ashurst for a total period of over 22 years, holding the positions of Administration Manager, HR Manager and National Remuneration Manager.

Casual employment in law firms

7. While every firm manages its workforce differently, it is typical that a majority of those employees engaged on a casual basis are law students who are employed on an as needs basis to undertake paralegal work and to provide support to legal support staff during peak periods.
8. For example, Norton Rose Fulbright Australia periodically engages law students as casual paralegal staff to assist with large litigation matters that require a significant increase in resources for a short period of time to undertake tasks, such as the inspection of documents for discovery.
9. We find that there is a great mutual benefit in engaging law students on a casual basis. It provides our firm with access to a flexible workforce during these peak busy periods. It also provides those law students with experience in a law firm, which is of enormous benefit to them as they seek employment following graduation. Indeed, it is not uncommon for graduate lawyers to have previously been employed by the firm as a casual employee.
10. Other situations in which law firms would draw upon casual employees is to support legal support staff during peak periods, such as during office moves, assisting office services and mailroom staff, and supporting reception and other legal administration roles during staff absences.
11. Lunch breaks in law firms are very commonly taken between the hours of 1.00pm to 2.00pm. A sensible "afternoon shift" for a casual employee supporting legal support staff would accordingly occur between 2.00pm and 5.00pm. This is, however, not currently possible because of the four hour minimum engagement operating under the LS Award.
12. I understand and verily believe that the experience in other law firms is similar to that I have outlined above. I accordingly consider that it would be of great benefit to the legal industry for the casual minimum engagement under the LS Award to be reduced from four hours to three hours.

14 June 2016

Sheila Roberts