

Form F46 – Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

The Applicant



These are the details of the person who is making the application.

Title Mr Mrs Ms Other please specify:
First name(s)
Surname
Postal address 833 Bourke Street
Suburb Docklands
State or territory Victoria Postcode 3008
Phone number 0425 755 938 Fax number (03) 9235 7770
Email address ben.redford@unitedworkers.org.au

If the Applicant is a company or organisation please also provide the following details

Legal name of business	United Workers Union
Trading name of business	United Workers Union
ABN/ACN	52728088684
Contact person	Ben Redford

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes – Specify language

No

Does the Applicant require any special assistance at the hearing or conference (eg a hearing loop)?

Yes – Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

Applicant's representative



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person			
Firm, organisation or company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Is the Applicant's representative a lawyer or paid agent?

Yes

No

1. Coverage

1.1 What is the name of the modern award to which the application relates?



Include the Award ID/Code No. of the modern award

MA000119, Restaurant Industry Award 2020

1.2 What industry is the employer in?

Restaurants industry.

2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

a determination varying a modern award

a modern award

a determination revoking a modern award

2.2 What are the details of your application?

A draft determination is attached to this application.

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.

1. In extending the duration of the operation of Schedule X from 30 September 2020 to 29 March 2021, the Full Bench in [2020] FWCFB 5137 said:

“The observations made in the 8 April decision in respect of the basis for the initial insertion of Schedule X into the relevant Awards remain apposite. In particular, the COVID-19 pandemic is still in progress and without the continued operation of Schedule X there would be a ‘regulatory gap’ in the award safety net concerning persons who are required to self isolate. Continuing access to unpaid pandemic leave will enable more people to remain in employment and will support the important public policy objective of encouraging those who should self isolate to do so, thereby limiting the spread of COVID-19 in workplaces and allowing business to continue to operate”¹

2. The COVID-19 pandemic is still in progress:

- a. Each State and Territory continues to have declarations and/or orders in place so as to enable enhanced public health and enforcement powers in connection with the Pandemic², which have been regularly renewed since being made between January and March 2020;

¹ At [11].

² [Public Health \(Emergency\) Declaration Further Extension 2021 \(No 1\) \[ACT\]](#); [Approval of extension of a major emergency declaration under section 23 of the Emergency management Act 2004 \[SA\]](#); [Extension of State of Emergency Declaration](#) and [Extension of Declaration \(No.2\) of a Public Health State of Emergency \[WA\]](#); [Public Health \(Further Extension of Declared Public Health Emergency-COVID-19\) Regulation \(No.6\) 2020 \[Qld\]](#); [Extension of Operation of a Declaration of Public Health](#)

- b. International travel into Australia remains prohibited, save for Australian citizens and residents and their immediate family and travellers who have been in New Zealand for the previous 14 days.³
- c. Persons returning to Australia, save for those who have been only in New Zealand or are in some special exemption categories, are required to quarantine for 14 days and be tested for COVID-19.⁴
- d. There has been transmission linked to quarantine breaches in Victoria (July 2020, February 2021), New South Wales (August 2020, December 2020, March 2021) South Australia (November 2020), Tasmania (February 2021), Queensland (January 2021, March 2021) and Western Australia (February 2021), resulting in contact tracing efforts triggering requirements for testing and isolation.
- e. Whilst the pandemic is presently well controlled, the risk of outbreaks and associated intensive periods of contact tracing and testing remains.
- f. Testing, including at specialist testing facilities, continues with over 270,000 tests conducted in the week to 14 March 2021⁵.

3. The nationwide vaccination program is a critical intuitive in reducing the likelihood of further outbreaks. Despite indications that the vaccines would be available to all Australians by the end of October 2021,⁶ as at 17 March 2020 there had reportedly been 182,400 vaccines administered against a target of 4 million for the month of March.⁷ The Prime Minister has since clarified that only the first dose of vaccines is likely to be administered by the end of October 2021.⁸ It is presently unclear when the vaccination program will conclude.

4. The granting of the application to extend the unpaid pandemic leave entitlement until 31 December 2021 does not prohibit the Commission from calling the matter on prior to that date (either on application or on its own initiative) to consider a different sunset date.

5. Such further or other grounds as the Commission considers appropriate.

Attach additional pages, if necessary.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
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[Emergency](#) [NT]; [Extension of Emergency Declaration](#) [Tas]; [Extension of Declaration of a State of Emergency](#) [VIC]. In NSW there are ministerial powers under section 7 of the *Public Health Act 2010* to regulate by Order in the absence of an emergency being declared more broadly. A [number of such Orders](#), specific to the COVID-19 pandemic, remain in force.

³ [Australian Government – Coronavirus \(COVID-19\) advice for international travellers](#)

⁴ *Ibid.*

⁵ Australian Government Department of Health: [Tests conducted and results](#)

⁶ <https://www.pm.gov.au/media/first-covid-19-vaccinations>; <https://www.abc.net.au/news/2021-03-02/covid-live-updates-coronavirus-vaccine/13204614>

⁷ <https://www.theguardian.com/australia-news/datablog/ng-interactive/2021/mar/16/covid-vaccine-tracker-australia-distribution-rollout-progress-schedule-coronavirus-jab-news>

⁸ <https://www.sbs.com.au/news/vaccine-rollout-completion-not-possible-by-end-of-october>

Name	Ben Redford
Date	22 March 2021
Capacity/Position	Director



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

Form F48 – Application for directions on procedure

Fair Work Commission Rules 2013, Rule 7

This is an application to the Fair Work Commission for directions about procedure in relation to a matter in accordance with the [Fair Work Act 2009](#).

The Applicant



These are the details of the person who is making this application. The applicant for directions on procedure may be different from the applicant in the matter before the Commission.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	833 Bourke Street		
Suburb	Docklands		
State or territory	Victoria	Postcode	3008
Phone number	0425 755 938	Fax number	(03) 9235 7770
Email address	ben.redford@unitedworkers.org.au		

If the Applicant is a company or organisation

If the Applicant is a company or organisation please also provide the following details

Legal name of Applicant	United Workers Union
Applicant's trading name or registered business name	United Workers Union
Applicant's ACN (if a company)	
Applicant's ABN (if applicable)	52728088684
Contact person	Ben Redford

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes – Specify language

No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes – Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or organisation who is representing the Applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

Applicant's representative



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person			
Firm, organisation or company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Is the Applicant's representative a lawyer or paid agent?

Yes

No

The other party



These are the details of the other party in the matter.

Title Mr Mrs Ms Other please specify:

First name(s)

Surname

Postal address

Suburb

State or territory

Postcode

Phone number

Fax number

Email address

If the other party is an organisation

If the other party is an organisation please also provide the following details

Legal name of organisation	
Trading name of organisation	
ABN/ACN	
Contact person	

1. Preliminary

1.1 Are you seeking directions for an existing matter?

Yes – Go to 1.2

No – Go to 1.3

1.2 What is the name and matter number for the matter?

1.3 What is the type of matter that you want to initiate?

Briefly, provide the details of the type of matter.

An application to vary the Restaurant Industry Award 2020. The application is made in response to the Statement of the Commission [2021] FWC 1148, to extend the duration of entitlements referred to therein which are otherwise due to expire on 29 March 2021.

2. Reasons for seeking directions

2.1 Why are you applying to the Commission for directions?

The procedure is not prescribed by the FW Act, the Fair Work Commission Rules, the regulations or any other Act or regulations. Provide details below.

You are in doubt about the proper procedure to follow. Provide details below.

Rule 49 requires this application to be made in connection with an application to vary a modern award.

3. Proposed directions.


Set out your proposed directions you are seeking, if any (optional).

1. That the attached application to vary a modern award be published in the Fair Work Commission's website at a location deemed appropriate to the Commission.
2. That, upon such publication, the application be deemed served.
3. That notice of the application be given by the Fair Work Commission to subscribers to Fair Work Commission's "My Awards – All Matters" service in the usual way.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Ben Redford
Date	22 March 2021
Capacity/Position	Director



Where this form is not being completed and signed by the Respondent, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

MA000119 PRXXXTBC
FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.157 — FWC may vary etc. modern awards if necessary to achieve modern awards objective

COVID-19 Award Flexibility Schedules
(AM2020/93; AM2020/13; AM20201/X)

RESTAURANT INDUSTRY AWARD 2020
[MA000119]

Restaurants

JUSTICE ROSS, PRESIDENT

MELBOURNE, X MARCH 2021

Award flexibility schedules – Schedule X-Additional measures during the COVID-19 pandemic – Restaurant Industry Award 2020.

A. Further to the decision [2021 FWCFB XXX] issued by the Full Bench on X March 2021, the above award is varied as follows:

1. By deleting the words “29 March 2021” in clause X.1 and inserting “31 December 2021”.
2. By deleting the words “29 March 2021” in clause X.2.1(d) and inserting “31 December 2021”.

B. This determination comes into operation on 30 March 2021. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee’s first full pay period that starts on or after 30 March 2021.

PRESIDENT