

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	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input checked="" type="checkbox"/> Other please specify: Employee organisation		
Name	The Australian Workers' Union		
Postal address	Level 1, 16 – 20 Good Street		
Suburb	Granville		
State or territory	NSW	Postcode	2142
Phone number	02 8005 3333	Fax number	N/A
Email address	stephen.crawford@nat.awu.net.au ; nat.office@nat.awu.net.au		

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

Legal name of business	The Australian Workers' Union
Trading name of business	
ABN/ACN	
Contact person	Stephen Crawford (Senior National Legal Officer)

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

- *Alpine Resorts Award 2010* MA000092
- *Aluminium Industry Award 2020* MA000060
- *Amusement, Events and Recreation Award 2010* MA000080
- *Aquaculture Industry Award 2020* MA000114
- *Asphalt Industry Award 2010* MA000054
- *Cement, Lime and Quarrying Award 2010* MA000055
- *Cemetery Industry Award 2020* MA000070
- *Corrections and Detention (Private Sector) Award 2020* MA000110
- *Cotton Ginning Award 2020* MA000024
- *Fitness Industry Award 2010* MA000094
- *Gardening and Landscaping Services Award 2020* MA000101
- *Horse and Greyhound Training Award 2010* MA000008
- *Horticulture Award 2010* MA000028
- *Meat Industry Award 2010* MA000059
- *Nursery Award 2020* MA000033
- *Pastoral Award 2010* MA000035
- *Pest Control Industry Award 2010* MA000097
- *Pharmaceutical Industry Award 2010* MA000069
- *Poultry Processing Award 2010* MA000074
- *Premixed Concrete Award 2020* MA000057
- *Professional Diving Industry (Recreational) Award 2010* MA000109
- *Racing Clubs Events Award 2010* MA000013

- *Racing Industry Ground Maintenance Award 2020* MA000014
- *Salt Industry Award 2010* MA000107
- *Seafood Processing Award 2020* MA000068
- *Silviculture Award 2020* MA000040
- *Sugar Industry Award 2010* MA000087
- *Waste Management Award 2010* MA000043
- *Wool Storage, Sampling and Testing Award 2010* MA000044

1.2 What industry is the employer in?

N/A - various

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.

Background

1. The variation proposed by the Applicant relates to the COVID-19 pandemic.
2. On 8 April 2020, the Fair Work Commission (FWC) issued a decision: [2020] FWCFB 1837, which modified a number of awards to insert a new Schedule – ‘Schedule X: Additional measures during the COVID-19 pandemic’.
3. The awards included within this application were included amongst the awards that were varied by the FWC on 8 April 2020.
4. Schedule X provides an entitlement to unpaid ‘pandemic leave’ and the flexibility to take twice as much annual leave at half pay.
5. In a Statement issued on 23 June 2020, the FWC stated that it did not propose to extend the operation of Schedule X beyond 30 June 2020, and that any party seeking to do so could apply by 26 June 2020.

Reasons for Extension

6. The COVID-19 pandemic continues to affect Australian workers and the lasting duration of its effect is difficult to predict. However, the impacts can be anticipated to last at least until 30 September 2020.
7. No legislative changes alter the correctness of the legal reasoning in paragraphs [68]-[70] and [74] of the decision in [2020] FWCFB 1837 as to the need to preserve the employment relationship where an employee is required to self-isolate.

8. There is still merit in retaining an ability for an employer and an employee to agree for twice the amount of annual leave to be taken at half pay because this provides another option to manage the ongoing impact of the pandemic.
9. Accordingly, the Applicant submits that the reasons for inserting Schedule X remain current and favour the retention of that Schedule for a further limited period.
10. Such further or other grounds that 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	
Name	Daniel Walton
Date	29 June 2020
Capacity	National Secretary



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

PRXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

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

Variation of Awards

(AM2020/XX)

FWC MEMBER/S

LOCATION, XX XXXX 2020

Schedule X—Additional measures during the COVID-19 pandemic.

A. Further to the decision [2020 FWCFB XXXX] issued by the Full Bench of the Fair Work Commission on XX XXX 2020, the awards listed in Schedule A of this draft determination are varied as follows:

1. By deleting clause X.1 in Schedule X and replacing it with the following:

X.1 Subject to clauses X.2.1(d) and X.2.2(c), Schedule X operates from 8 April 2020 until 30 September 2020. The period of operation can be extended on application.

2. By deleting sub clause (d) of clause X.2.1 in Schedule X and replacing it with the following:

(d) A period of leave under clause X.2.1(a) must start before 30 September 2020, but may end after that date.

3. By deleting sub clause (c) of clause X.2.2 and replacing it with the following:

(c) A period of leave under clause x.2.2(a) must start before 30 September 2020, but may end after that date.

B. This determination comes into operation on XX XXXX 2020. 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 XX XXXX 2020.

FWC Member

SCHEDULE A

Awards varied:

- *Alpine Resorts Award 2010* MA000092
- *Aluminium Industry Award 2020* MA000060
- *Amusement, Events and Recreation Award 2010* MA000080
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- *Silviculture Award 2020* MA000040

- *Sugar Industry Award 2010* MA000087
- *Waste Management Award 2010* MA000043
- *Wool Storage, Sampling and Testing Award 2010* MA000044