

About the F46 application form

Application to vary a modern award

Who can use this form

Use this form if you want to make an application for the Fair Work Commission (the Commission) to make:

- a modern award,
- a determination varying a modern award, or
- a determination revoking a modern award.

You should only use this form to make an application **outside** of the system of the 4 yearly reviews of modern awards (4 yearly reviews) or the annual wage reviews.

You must be a person, organisation or outworker entity covered by the modern award to be eligible to make an application, or be an organisation that is entitled to represent the industrial interests of the person(s) or organisation(s) that are covered by the modern award.

You may make applications for 2 or more related things at the same time, depending on the kind of application you want to make. See section 158 of the [Fair Work Act 2009](#) (the FW Act) for more information about who may apply to make a modern award or for a determination varying or revoking a modern award.

About varying modern awards

The Commission must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions. In order to achieve the modern awards objective, the Commission must take into account the matters set out in section 134 of the FW Act, such as relative living standards and the needs of the low paid.

The FW Act allows the Commission to make a modern award, or make a determination varying or revoking a modern award **outside** of the system of 4 yearly reviews if the Commission is satisfied that to do so is necessary to achieve the modern awards objective (s.157(1)).

The Commission may also make a determination varying modern award minimum wages **outside** of the 4 yearly review and the system of annual wage reviews if the Commission is satisfied that to do so is:

- justified by work value reasons, and
- necessary to achieve the modern awards objective (s.157(2)).

Note: section 157 to 160 of the FW Act set out other situations where the Commission may vary a modern award.

See the Commission's [Awards & agreements](#) web page for more information about the 4 yearly review and the annual wage review.

Lodgment and service of your completed form

1. **Lodge this application** and any supporting documents with the Commission.

You can lodge this application and any supporting documents through the Commission's [Online Lodgment Service](#) or by post, fax, email or in person at the [Commission's office](#) in your state or territory.

2. **Serve a copy of your application and any supporting documents** on each Respondent listed in the application as soon as practicable after lodging with the Commission. You can send this application and supporting documents in a number of ways, including by email or by express or registered post.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing. However, the requirement to give notice and seek permission does not apply to matters arising under Part 2-3 of the [Fair Work Act 2009](#).

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, also does not apply if the lawyer or paid agent is:

- an employee or officer of the person **or**

- a bargaining representative that is representing the person **or**
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Paid agent – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or business responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.




Remove this cover sheet and keep it for future reference – it contains useful information

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	PO BOX 60		
Suburb	Granville		
State or territory	NSW	Postcode	2142
Phone number	02 8868 1546	Fax number	
Email address	abha.devasia@amwu.org.au Nswlegalteam@amwu.org.au		

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

Legal name of business	“Automotive, Food, Metals, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU)
Trading name of business	
ABN/ACN	59 459 725 116
Contact person	Abha Devasia – National Research 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

Manufacturing and Associated Industries and Occupations Award 2020 (MA000010)

Graphic Arts, Printing and Publishing Award 2010 (MA000026)

1.2 What industry is the employer in?

Manufacturing and associated industries.

Printing and publishing industries.

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 Modern Awards to insert a new Schedule – ‘Schedule X: Additional measures during the COVID-19 pandemic’.
3. The Manufacturing and Associated Industries and Occupations Award 2020 and the Graphic Arts and Printing and Publishing Award 2020 was one of the Awards so modified.
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.
6. Schedule X in the Manufacturing and Associated Industries and Occupations Award 2020 and the Graphic Arts and Printing and Publishing Award 2020 has since lapsed.
7. For those awards that applications to vary were made, the FWC on 1 July 2020 issued a decision stating that the operative date of Schedule X be extended to 30 September 2020.

Reasons for Extension


8. There have been significant changes since 30 June 2020 including the reemergence of a new wave of infections and enforcement of additional safety and distancing measures to contain the spread in Victoria. NSW is currently at a heightened risk of a second wave of infections. Workplace transmission has become a driving factor in the rise in the transmissions.
9. It is likely that the pandemic will last for the remainder of 2020 and at least into 2021 and will continue to affect workers for the duration.
10. Providing the ability for an employer and employee to access twice the amount of annual leave and half pay provides a useful mechanism for maintaining the employment relationship and assist in managing the impact of the pandemic.
11. The continued provision of access to unpaid pandemic leave will allow more people to remain in employment and will assist in the important public policy objective of encouraging those who may be required to self-isolate to do so.
12. No legislative changes alter the correctness of the legal reasoning in paragraphs [68]-[70] and [74] of the decision [2020] FWCFB 1837 as to the need to preserve the employment relationship where an employee is required to self-isolate.
13. Accordingly, the Applicant submits that the reasons for inserting Schedule X are immediate and seeks the insertion of the Schedule for a further limited period.
14. 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	Andrew Dettmer
Date	30 June 2020
Capacity/Position	AMWU National President



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

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 30 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:

- *Manufacturing and Associated Industries and Occupations Award 2020 (MA000010)*
- *Graphic Arts Award 2010 (MA000026)*
- *Food, Beverage and Tobacco Manufacturing Award 2010 (MA000073)*