

# About the F46 application form

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## 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](http://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	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Philip		
Surname	Paterson		
Postal address	[REDACTED]		
Suburb	[REDACTED]		
State or territory	SA	Postcode	5097
Phone number	[REDACTED]	Fax number	
Email address	admin@myoshc.net.au		

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

Legal name of business	Allison & Phil Family Trust
Trading name of business	my OSHC
ABN/ACN	60 477 877 139
Contact person	Phil Paterson

### 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

Children Services Award MA0000120  
<http://awardviewer.fwo.gov.au/award/show/MA0000120>

### 1.2 What industry is the employer in?

Outside School Hours Care

## 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?**

The Award and Pay Guide differ: a 19 year old in the Pay Guide earns more than a 20-year-old  
The Pay Guide

**Junior - Casual - 19 years**

Junior employees employed as a Children's services employee level 3, 4 or 5, or as a Support worker at any level must be paid at the appropriate adult rate.

**Table 1 of 2**

Classification	Hourly pay rate	Overtime - Saturday (not shiftworkers) - first 2 hours	Overtime - Saturday (not shiftworkers) - after 2 hours	Saturday - shiftworkers	Sunday	Public holiday	Early morning shift
Children's services employee level 1.1 on commencement	\$26.33	\$36.86	\$47.39	\$36.86	\$47.39	\$57.92	\$28.43
Children's services employee level 2.1 on commencement	\$26.33	\$36.86	\$47.39	\$36.86	\$47.39	\$57.92	\$28.43
Children's services employee level 2.2 after 1 year	\$27.24	\$38.13	\$49.03	\$38.13	\$49.03	\$59.92	\$29.42

Versus a 20 year

**Casual**

**Table 1 of 2**

Classification	Hourly pay rate	Overtime - Saturday (not shiftworkers) - first 2 hours	Overtime - Saturday (not shiftworkers) - after 2 hours	Saturday - shiftworkers	Sunday	Public holiday	Early morning shift
Support worker level 1.1 on commencement	\$25.36	\$35.51	\$45.65	\$35.51	\$45.65	\$55.80	\$27.39

Therefore the pay guide is not aligning to the children services award

The Award States this



### 14.3 Junior employees

(a) Junior employees employed as Children’s Services Employees Level 3,4 and 5 must be paid at the appropriate adult rate.

(b) Junior employees employed as Children’s Services Employee Level 1 or Children’s Services Employee Level 2 will be paid no less than the following percentages of the corresponding Children’s Services Employee Level 2 rate:

<b>Age</b>	<b>% of adult rate</b>
Under 17 years	70
Under 18 years	80
Under 19 years	90
Under 20 years	100

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.

The current system is commercially unsustainable as we cant reduce peoples wages when they turn 20

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	Phil Paterson
Name	Phil Paterson
Date	29.10.2020
Capacity/Position	Managing 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**