

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] Mr [] Mrs [] Ms [] Other please specify: | | |
| First name(s) | Philip | | |
| Surname | Heath | | |
| Postal address | PO Box 1208 | | |
| Suburb | Rozelle | | |
| State or territory | NSW | Postcode | 2039 |
| Phone number | 0298181931 | Fax number | |
| Email address | phil@austpayroll.com.au | | |

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

| | |
|--------------------------|--|
| Legal name of business | Australian Payroll Association Pty Ltd |
| Trading name of business | |
| ABN/ACN | 54130089226 |
| Contact person | Tracy Angwin |

Does the Applicant need an interpreter?



If the Applicant has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

[] Yes – Specify language

[N] No

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

Yes – Please specify the assistance required

No] 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] 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] 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

Genera; Retail Industry Award MA000004

1.2 What industry is the employer in?

Payroll Association

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?

I am writing in relation to clause 11.4 of the GRI Award in relation to paying casuals a minimum of 3 hours work. The change in the wording to the clause states that an employer **must** pay a casual a minimum of 3 hours work, which implies even if the employee goes home sick and works less than 3 hours then the employer must pay them 3 hours. I gather this was not the intention as an employee can then come in and after an hour say they are sick and they get paid 3 hours, so employers may be overpaying employees as a result of the change of the wording for this clause.

Can you please investigate and ideally make it clearer again the Award?

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.

Fair Work response to this question:

Dear Jasmine, Thank you for your time earlier. Per clause 11.4 General Retail Industry Award, a casual employee must be given at least 3 hours of work in a row. If they aren't given these hours, they still have to be paid a minimum of 3 hours. However, if the employee leaves work early due to illness, they would only be paid for the time spent at work. Please do not hesitate to get in contact if you have any further questions. Kind Regards, Melissa Fair Work Ombudsman

Previous wording in the Award:

13.4 The minimum daily engagement of a casual is three hours, provided that the minimum engagement period for an employee will be one hour and 30 minutes if all of the following circumstances apply:


- (a) the employee is a full-time secondary school student; and
- (b) the employee is engaged to work between the hours of 3.00 pm and 6.30 pm on a day which they are required to attend school; and
- (c) the employee agrees to work, and a parent or guardian of the employee agrees to allow the employee to work, a shorter period than three hours; and
- (d) employment for a longer period than the period of the engagement is not possible either because of the operational requirements of the employer or **the unavailability of the employee.**

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 | Philip Heath |

| | |
|-------------------|---------------------------|
| Date | 09/06/21 |
| Capacity/Position | Senior Payroll Consultant |



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