

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 and Agreements](#) web page for more information about the 4 yearly review and the annual wage review.

Lodgement and service of your completed form

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

You can lodge your application by post, by fax or by 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 lawyer or union official) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when you appear at the Commission. You will need the permission of the Commission member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

- a bargaining representative, or
- employed by a union or employer organisation, a peak union or peak employer body, or
- one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

Glossary of common terms

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

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 type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input checked="" type="checkbox"/> Other please specify:		
First name(s)	BRENDA JANE		
Surname	MCKAY		
Postal address	PO BOX 134		
Suburb	ARCHERFIELD BC		
State or territory	QLD	Postcode	4108
Phone number	██████████	Fax number	
Email address	████████████████████		

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

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

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 business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. 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 business who is representing the Applicant.

Name of person			
Organisation			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

1. Coverage

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

Road Transport (Long Distance Operations) Award 2010 [MA000039]

1.2 What industry is the employer in?

Long Distance Transport Operations

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?

1/ The Applicant seeks to vary Clause 3, Definition of “Loading and Unloading.”

OMIT;

tarping, installing and removing gates and operation of on-board cranes

INSERT;

All non-driving activities including but not limited to;

- [i] Complying with entrance and departure procedures at load or unload location.
- [ii] apply or release all load restraint devices, including gates and tarps.
- [iii] Operation of trailer curtains.
- [iv] Operation of forklifts, pallet jacks, winches and mobile cranes.
- [v] Be on-call or to Assist a third party to load or unload freight.
- [vi] Waiting time or Queuing time.
- [vii] Processing of freight documentation.
- [viii] checking vehicle weights on weighbridge.

2/ The Applicant seeks to vary clause 14.2 C (i) – “Travelling Allowance”

OMIT;

“This will not be payable where an employee is provided with suitable accommodation away from the vehicle.”

2.3 What are the grounds being relied on?

[1] The current definition of “Loading and Unloading” in clause 3, is not comprehensive enough to accurately describe this task in the modern transport industry. An employee covered by this Award can be exploited by a loophole which has developed, where an Employer can be motivated to engage a Long-Distance driver to complete the task of “loading or unloading” without proper remuneration AND in contrary to clause 20.4.

[2] As directed by clause 4.2 of the Award, When a Long Distance Operation is completed, an employee performing duties which are covered under the Road Transport and Distribution Award 2010, MUST be paid for every hour engaged in all tasks and ancillary tasks to the actual loading or unloading of goods from the vehicle under their control, which includes;

Kms travelled to the load or unload location, waiting time, assisting loaders or unloaders to place or remove goods to or from the vehicle, placing or removing load restraints as per the NTC’s “Load Restraint Guide.” And attend to load documentation.

A driver of a grade 6 vehicle classification could take an entire shift to complete the range of tasks involved in Loading and/or Unloading and be denied remuneration for that performance of work.

[3] Employee’s covered by the Long-Distance Operations Award, have been denied remuneration for these very same tasks in such cases like, *Burge v Adelaide Interstate Loading Agency Pty Ltd [2014] SAIRC 31 (26 September 2014)* and *Bewley v Linfox Interstate Transport [1998] SAIRC 37 (21 July 1998)* and *Graham Jones v Post Transport Pty Ltd [1999] NSWCMC 3 (1 January 1999)*

As the Modern Award is not clearly defining loading and unloading, the Commissioners in the matters above, have referred to the literal meaning from one of the popular Dictionary’s. This meaning is;

Loading “to place”

Unloading “to remove”

which has been determined as to be physically engaged in the actual placing or the removing of the freight”. The transport Industry generally accepts this task as being only one component to the complete process.

[4] Modern equipment does not necessarily have gates, tarps or mobile cranes. Employee’s covered by this Award are being disadvantaged by this ambiguity in the definition. Employee’s are often required to be present in assisting or be physically engaged and/or directing the placing or removal of goods to and from the vehicle under the driver’s control.

[5] The MA000039 Award only recognizes to be physically engaged in placing or removing goods from a vehicle and work involving gates, tarps and mobile cranes. Whereas the transport industry generally recognizes all tasks ancillary to a Long-Distance journey carried out by the Long-Distance driver as loading or unloading, these include, but not limited to;

Processing location access/departure and CoR procedures,

Queueing/waiting time,

Opening and closing curtains,
Removing and replacing gates,
Place and remove load restraints, ,
Assisting a 3rd party loading and/or unloading personnel,
Attend to freight documentation.

[6] If the commencement or destination points are inside a Capital City radius of 32kms, the drivers can be denied remuneration for those kms travelled. The Award only recognizes travel between the Capital Cities and not travel inside the 32km radius, when multiple commencement and/or destination points are applicable. We have calculated journeys which may result in distance variations of up to approx 300kms or \$138.30 per week between 2 drivers performing long distance operations on the same journey

[7] The [Heavy Vehicle National Law Act 2012](#). requires a heavy vehicle driver to complete a National work diary. This work diary may show 14hrs of “work time”, but the employee only receives remuneration for 11hrs or 950kms, as in the case of a Brisbane to Sydney long distance journey.

Such a long distance journey may involve, departing home base in Brisbane City, travel to a location to load the vehicle, travel to Sydney City, travel to a location to unload the vehicle and return to the Sydney depot, all inclusive of the 11hrs of work time or 950kms of km rate remuneration.

[8] The above descriptions of work and the associated denial of remuneration for an Employee’s performance of work, is contributing to the Industry problem of undercutting freight rates. This ambiguous definition in the Award, enables an uneven playing field between transport contractors. This exploitation can potentially exacerbate unsafe work practices by placing unreasonable financial pressure on long-distance drivers and their mental health.

[9] **Travelling Allowance** is being incorrectly substituted for additional Meal Allowances. In the current version of the Award, where an employer provides accommodation, this allowance is being denied, leaving the employee disadvantaged to other workers who get to go home at the end of their shift. We accept 1 overtime meal allowance per journey is included in the Km rate.

[10] Long Distance drivers may work up to a 15hr with Advanced Fatigue Accreditation and then to be denied additional meal allowances is discriminatory, compared to other employees of the same organization covered by a different Award who work the same amount of overtime.

[11] An Employer that claims the Industry Disability Allowance covers this meal allowance is a misinterpretation. The employees covered by the Road Transport and Distribution Award 2010, working a similar shift are paid up to a 30% shift allowance AND a Meal Allowance. A Long-Distance driver under these same conditions is denied the Meal Allowance and Travel Allowance if accommodation is supplied by the employer.

[12] A long distance driver may not have access to cooking facilities nor access to food supplies and therefore must pay a higher price for their food at fast food outlets. If the long-distance driver has no refrigeration facilities, they cannot carry meals with them from home. The driver would be subjected to purchasing several meals a day, without compensation being provided either by subsidy or reimbursement.

[13] The Australian Taxation Office states a long-distance driver can reasonably spend up to approx. \$95 per day on food and drinks. For an Employer to be relieved of paying this Allowance because they provide Accommodation is unfair to this class of employee. For an employer to pay 3 meal allowances to subsidize the higher price of fast food is not unreasonable.

[14] The Applicant does not seek to alter the amount payable, but simply to ensure long distance drivers receive a meal allowance and be treated equally to other Awards.

[15] If an employer was to pay a “living away from home allowance”, the prescribed amount would be suitable to pay for accommodation and for meals. Currently, this clause denies any payment for not being able to return home after the employees shift.

[16] The wording “suitable accommodation” is ambiguous. It’s open to interpretation with no standard of quality being prescribed by law. An employee should not be placed in a position to create a controversy if this suitability is not met. Then, in addition to be denied this allowance is unreasonable and unfair.

[17] I have experienced Employers who refuse to pay a Travel Allowance when held in a Capital City for 24hr, when complying with Driver Fatigue regulations. Also when there is no journey allocated immediately and the Employee is stood down overnight, but not necessarily for 24hrs.

The Employee cannot return Home at the end of their shift, but is still denied the daily Travel Allowance.

Attach additional pages, if necessary.

Signature

Signature	BJ McKay
Name	Brenda McKay
Date	05 January, 2020
Capacity/Position	Individual

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS