

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 Mr Mrs Ms Other please specify:

First name(s)

Surname

Postal address

Suburb

State or territory

Postcode

Phone number

Fax number

Email address

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

Legal name of business REGIONAL AVIATION ASSOCIATION OF AUSTRALIA LIMITED

Trading name of business

ABN/ACN 23 008 586 054

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	Benjamin Martin		
Organisation	Norton White		
Postal address	Level 4, 66 Hunter Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	02 9230 9400	Fax number	02 9230 9499
Email address	ben.martin@nortonwhite.com		

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

Air Pilots Award 2010 – MA000046

1.2 What industry is the employer in?

Aviation

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 RAAA proposes the following variation to clause 13 of the Exposure draft.

13. Training—classifications

13.1 This clause does not apply to employees engaged in aerial application operations.

13.2 Where **employment has commenced and the employer and not a regulatory body or otherwise** requires a pilot **to undertake additional training** to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award, **other than the aircraft type for which the pilot was employed**, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer.

13.3 Where a pilot fails to reach or maintain a standard required the pilot will receive further re-training and a subsequent check. The pilot may elect to have a different check captain on the second occasion.

13.4 Where a pilot fails the second check in clause 13.3, the pilot may, where practicable, be reclassified to the previous or a mutually agreed equivalent position.

13.5 Where employment commences under this award, the pilot's service required to be undertaken by the prospective employer, **and not a regulatory body or otherwise**, prior to commencing employment, during a training period will be recognised and any training required to be conducted, **by the prospective employer and not a regulatory body or otherwise**, at the pilot's cost will be reimbursed to the pilot.

13.6 **Nothing in this clause 13 prevents the pilot and employer entering into an individual return of service or training bond.**

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.

1. This application is made pursuant to sections [157 and 160](#) of the *Fair Work Act 2009* (Cth). The application is to remove ambiguity or uncertainty [or in the alternative, to amend the terms of the Award on the basis it is necessary to achieve the](#) ~~and only seeks to clarify the clause's intended meaning. The amendments sought will not derogate from the~~ modern awards objective.


2. The variations proposed:
 - a. clarify the intention and interpretation of the award provision;
 - b. promote social inclusion through increased workforce participation as it encourages employers to attract and retain employees;
 - c. promote flexible modern work practices and the efficient and productive performance of work as it encourages employers to introduce, maintain and improve employee-specific training programs for the benefit of employees as they progress with the employer;
 - d. maximise productivity for aircraft operators as it avoids disputation, and reduces employment costs (by increasing employee retention) and reducing the need to continuously train new pilots; and
 - e. encourage employment stability for pilots that contributes to employment growth and ultimately, the sustainability, performance and competitiveness of the national economy,and accordingly are necessary to achieve the modern awards objective.

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	Keira Nelson
Date	4 July 2019
Capacity/Position	Solicitor



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