

## Form F48 – Application for directions on procedure

*Fair Work Commission Rules 2013, Rule 7*

*This is an application to the Fair Work Commission for directions about procedure in relation to a matter in accordance with the [Fair Work Act 2009](#).*

### The Applicant



These are the details of the person who is making this application. The applicant for directions on procedure may be different from the applicant in the matter before the Commission.

<b>Title</b>	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>	Joshua		
<b>Surname</b>	Gomperts		
<b>Postal address</b>	4, 156 Bambra Rd		
<b>Suburb</b>	Caulfield		
<b>State or territory</b>	VIC	<b>Postcode</b>	3162
<b>Phone number</b>	0423 063 626	<b>Fax number</b>	
<b>Email address</b>	<a href="mailto:joshgomperts@gmail.com">joshgomperts@gmail.com</a>		

### If the Applicant is a company or organisation

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

<b>Legal name of Applicant</b>	-
<b>Applicant's trading name or registered business name</b>	-
<b>Applicant's ACN (if a company)</b>	-
<b>Applicant's ABN (if applicable)</b>	-
<b>Contact person</b>	-

### 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 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).

<b>Name of person</b>	Alessandra Moussa		
<b>Firm, organisation or company</b>	Victorian Ambulance Union Incorporated		
<b>Postal address</b>	Po Box 400		
<b>Suburb</b>	North Melbourne		
<b>State or territory</b>	VIC	<b>Postcode</b>	3051
<b>Phone number</b>	0488 224 335	<b>Fax number</b>	-
<b>Email address</b>	<a href="mailto:Alessandra.moussa@vau.org.au">Alessandra.moussa@vau.org.au</a>		

**Is the Applicant's representative a lawyer or paid agent?**

Yes

No

**The other party**

**If the other party is an organisation**

If the other party is an organisation please also provide the following details

<b>Legal name of organisation</b>	
<b>Trading name of organisation</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	

## 1. Preliminary

### 1.1 Are you seeking directions for an existing matter?

Yes – Go to 1.2

No – Go to 1.3

### 1.2 What is the name and matter number for the matter?

### 1.3 What is the type of matter that you want to initiate?

Briefly, provide the details of the type of matter.

An Application to vary the *Ambulance & Patient Transport Industry Award 2020* in response to the Statement of the Commission [2021] FWC 1148.

## 2. Reasons for seeking directions

### 2.1 Why are you applying to the Commission for directions?

The procedure is not prescribed by the FW Act, the Fair Work Commission Rules, the regulations or any other Act or regulations. Provide details below.

You are in doubt about the proper procedure to follow. Provide details below.

Rule 49 requires this application to be made connection with an application to vary a Modern Award.

## 3. Proposed directions.

Set out your proposed directions you are seeking, if any (optional).

1. That the attached application to vary a modern award be published on the Fair Work Commission's website at a location deemed appropriate to the Commission.
  2. That, upon completion of the above step, the attached application be deemed served.
  3. That notice of the application be given by the Fair Work Commission to subscribers to Fair Work Commission's "My Awards – All Matters" service in the usual way.

## 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.

<b>Signature</b>	A. Moussa
<b>Name</b>	Alessandra Moussa
<b>Date</b>	22 March 2021
<b>Capacity/Position</b>	Lawyer & Senior Industrial Officer Victorian Ambulance Union Incorporated



Where this form is not being completed and signed by the Respondent, 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**

## 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)	Joshua		
Surname	Gomperts		
Postal address	4, 156 Bambra Rd		
Suburb	Caulfield		
State or territory	VIC	Postcode	3162
Phone number	0423 063 626	Fax number	
Email address	<a href="mailto:joshgomperts@gmail.com">joshgomperts@gmail.com</a>		

### 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 (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	Victorian Ambulance Union Incorporated		
Postal address	Po Box 400		
Suburb	North Melbourne		
State or territory	VIC	Postcode	3053
Phone number	0488 224 335	Fax number	-
Email address	<a href="mailto:Alessandra.moussa@vau.org.au">Alessandra.moussa@vau.org.au</a>		

**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

Ambulance & Patient Transport Industry Award 2020 [MA000098] (Award)

### 1.2 What industry is the employer in?

Ambulance & Patient Transport Industry, as defined in clause 4.2 of the Award.

## 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.

### The Applicant

1. The Applicant is an employee of St Johns Ambulance (Vic) (St Johns) and has been employed with St Johns since in or around late May 2019 as a casual employee.
2. The Award regulates the terms and conditions of the Applicant's employment.
3. The Applicant is a member of the Victorian Ambulance Union Incorporated.

### Background giving rise to the application

4. The variation proposed by the Applicant relates to the COVID-19 Pandemic.
5. The Award contains at Schedule X an entitlement to unpaid pandemic leave and an entitlement to take annual leave at half pay.
6. The right to commence a period of unpaid pandemic leave or a period of annual leave at half pay in the Award will expire on 29 March 2021, as a consequence of paragraph (d) of clause X.2.1 (unpaid pandemic leave) and paragraph (c) of clause X.2.2 of Schedule X of the Award (annual leave at half pay).
7. The Applicant submits that it is necessary to extend the operation of clause X.2.1 in Schedule X for unpaid pandemic leave to 31 December 2021.

### Submission in support of Application

8. In extending the duration of the operation of Schedule X from 30 September 2020 to 29 March 2021, the Full Bench in [2020] FWCFB 5137 said:

*“The observations made in the 8 April decision in respect of the basis for the initial insertion of Schedule X into the relevant Awards remain apposite. In particular, the COVID-19 pandemic is still in progress and without the continued operation of Schedule X there would be a ‘regulatory gap’ in the award safety net concerning persons who are required to self isolate. Continuing access to unpaid pandemic leave will enable more people to remain in employment and will support the important public policy objective of encouraging those who should self isolate to do so, thereby limiting the spread of COVID-19 in workplaces and allowing business to continue to operate”<sup>1</sup>.*

9. In support of the application to extend the unpaid pandemic leave entitlement, the Applicant notes that the COVID-19 pandemic is still in progress:
  - a. Each State and Territory continues to have declarations and/or orders in place so as to enable enhanced public health and enforcement powers in connection with the

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<sup>1</sup> At [11].



Pandemic<sup>2</sup>, which have been regularly renewed since being made between January and March 2020.

- b. International travel into Australia remains prohibited, save for Australian citizens and residents and their immediate family and travellers who have been in New Zealand for the previous 14 days.<sup>3</sup>
  - c. Persons returning to Australia, save for those who have been only in New Zealand or are in some special exemption categories, are required to quarantine for 14 days and be tested for COVID-19.<sup>4</sup>
  - d. There has been transmission linked to quarantine breaches in Victoria (July 2020, February 2021), New South Wales (August 2020, December 2020, March 2021) South Australia (November 2020), Tasmania (February 2021), Queensland (January 2021, March 2021) and Western Australia (February 2021), resulting in contact tracing efforts triggering requirements for testing and isolation.
  - e. Whilst the pandemic is presently well controlled, the risk of outbreaks and associated intensive periods of contact tracing and testing remains.
  - f. Testing, including at specialist testing facilities, continues with over 270,000 tests conducted in the week to 14 March 2021<sup>5</sup>.
10. The nationwide vaccination program is a critical intuitive in reducing the likelihood of further outbreaks. Despite indications that the vaccines would be available to all Australians by the end of October 2021,<sup>6</sup> as at 17 March 2020 there had reportedly been 182,400 vaccines administered against a target of 4 million for the month of March.<sup>7</sup> The Prime Minister has since clarified that only the first dose of vaccines is likely to be administered by the end of October 2021.<sup>8</sup> It is presently unclear when the vaccination program will conclude.

#### Orders sought

11. Noting the above and as has been acknowledged by the Commission, the circumstances of the COVID-19 pandemic in Australia may change rapidly, as was demonstrated over the course of 2020<sup>9</sup>. For the above reasons, the application to extend the operation of clause X.2.1 of Schedule X should be granted.
12. The granting of the application to extend the unpaid pandemic leave entitlement until 31 December 2021 does not prohibit the Commission from calling the matter on prior to that date (either on application or on its own initiative) to consider a different sunset date.
13. Such further or other grounds that the Commission considers appropriate.

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<sup>2</sup> [Public Health \(Emergency\) Declaration Further Extension 2021 \(No 1\) \[ACT\]](#); [Approval of extension of a major emergency declaration under section 23 of the Emergency management Act 2004 \[SA\]](#); [Extension of State of Emergency Declaration](#) and [Extension of Declaration \(No.2\) of a Public Health State of Emergency \[WA\]](#); [Public Health \(Further Extension of Declared Public Health Emergency- COVID-19\) Regulation \(No.6\) 2020 \[Qld\]](#); [Extension of Operation of a Declaration of Public Health Emergency \[NT\]](#); [Extension of Emergency Declaration \[Tas\]](#); [Extension of Declaration of a State of Emergency \[VIC\]](#). In NSW there are ministerial powers under section 7 of the *Public Health Act 2010* to regulate by Order in the absence of an emergency being declared more broadly. A [number of such Orders](#), specific to the COVID-19 pandemic, remain in force.

<sup>3</sup> [Australian Government – Coronavirus \(COVID-19\) advice for international travellers](#)

<sup>4</sup> *Ibid.*

<sup>5</sup> Australian Government Department of Health: [Tests conducted and results](#)

<sup>6</sup> <https://www.pm.gov.au/media/first-covid-19-vaccinations>; <https://www.abc.net.au/news/2021-03-02/covid-live-updates-coronavirus-vaccine/13204614>

<sup>7</sup> <https://www.theguardian.com/australia-news/datablog/ng-interactive/2021/mar/16/covid-vaccine-tracker-australia-distribution-rollout-progress-schedule-coronavirus-jab-news>

<sup>8</sup> <https://www.sbs.com.au/news/vaccine-rollout-completion-not-possible-by-end-of-october>

<sup>9</sup> [2020] FWCFB 3561 at [130]; [2020] FWCFB 7059 at [48].

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	J. Gomperts
Name	Joshua Gomperts
Date	22 March 2021
Capacity/Position	Employee, St Johns Ambulance (Vic)



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.

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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

### **COVID-19 pandemic – Schedules**

(AM2020/13; AM2020/93; AM2020/XX)

### **AMBULANCE & PATIENT TRANSPORT INDUSTRY AWARD 2020**

[MA000098]

JUSTICE ROSS, PRESIDENT

MELBOURNE, XX MARCH 2021

*Schedule X—Additional measures during the COVID-19 pandemic.*

A. Further to the decision [2021 FWCFB XXXX] issued by the Full Bench of the Fair Work Commission on XX XXX 2021, the above award is varied as follows:

1. By deleting the words “29 March 2021” in clause X.1 and inserting “31 December 2021”.

2. By deleting the words “29 March 2021” in clause X.2.1(d) and inserting “31 December 2021”.

B. This determination comes into operation on 30 March 2021. 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 30 March 2021.

PRESIDENT