

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: **Employer Organisation**

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 Traffic Management Association of Australia - 013Q

Trading name of business TMAA

ABN/ACN 31 212 135 038

Contact person Paul Kelly

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	David Lyons		
Organisation	Workplace Solutions		
Postal address	31109 / 2 Harbour Road		
Suburb	Hamilton		
State or territory	QLD	Postcode	4007
Phone number	07 3160 5646	Fax number	
Email address	david@ausws.com.au		

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

Building and Construction General On Site Award [MA000020]

1.2 What industry is the employer in?

Traffic Management

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?

At clause 34.2 (j) – **Shift Allowances** add the following words after the current last sentence:

Employees working for Traffic Management Industry employers shall be paid whilst on afternoon or night shift roster other than on a Saturday, Sunday or holiday their ordinary time hourly rate plus 30% regardless of the number of successive shift worked.

At clause 34.2 (m) **Five successive shifts** – add the following wording at the end of the current last sentence:

This clause does not apply to employees engaged in the Traffic Management industry.

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. The proposed variations of providing employees in the traffic management industry a single loading of thirty (30) percent loading on ordinary time hourly rate for any afternoon or night shift length of roster meets the modern award objectives set out in s 134(1) of the *Fair Work Act 2009*(Cth).
2. The current Modern Award clause 34.2 shift loadings provisions provide for three (3) different loadings of 15%, 30% and 50% for the same ordinary hours of work conducted by employees lends to confusion and mistaken or fraudulent application of the differing percentages within the Traffic Management Industry.
3. The current provisions also discourage enterprise bargaining, at both the initial negotiations stages with employee bargaining representatives and at the approval stage with the Member Assist Fair Work Commission system due to differing interpretations of the current subclauses within clause 34.2 of the Modern Award [MA000020].

4. The traffic management industry employers' available patterns of work are heavily influenced or controlled by Principal Contractors/ Civil Road Maintenance Contractors/ State Governments/ Local Councils' requirements which may vary greatly but are generally providing inconsistent patterns of work in concert with the expectation for traffic management providers to supply a low-cost service. The funding for traffic management work principally comes from public funds, thus public funding guidelines of the lowest tender price principles exist within the industry.

5. Importantly the proposed variation meets requirements of s 134(1)(d):

"the need to promote flexible modern work practices and the efficient and productive performance of work."

Traffic management employers are required to supply a flexible workforce to meet the various and varied demands of their clients, as indicated in point 4 this coupled with the works principally being funded by all levels of government monies. The addition of an thirty percent loading, replacing the fifteen percent at Modern Award clause 34.2 (j) is balanced against not having to pay the fifty percent loading if five successive shifts are not worked.

6. Considering this current penalty application at clause 34.2(m) to a pattern of work is primarily due to factors outside the control of the traffic management industry's direct employers. Restrictions of five successive shifts to obtain lower loadings for the same work is nonproductive, inflexible and not cost recoverable to employers that lack control of the programming of such work. Thus, the proposed variation is a fair compromise to promote both efficient and productive performance of work within the traffic management industry. This proposed variation will provide value for the public financing of this industry and as such is in the public interest for the variations to be approved.

7. The increase proposed at clause 34.2(j) and reduction at clause 34.2 (m) further will be cost neutral to employers and employees will not be disadvantaged when considering the regular pattern of shift work in the traffic management industry. One standard rate for shift loading has administrative and forward tendering savings for employers and provides certainty in planning, pricing, costings and programming, this is balanced against employees having certainty around hourly pay rates for any such shift work conducted Monday to Friday.

8. The Applicant reserves the right to provide further submissions on the proposed variation meeting the objectives of the Modern Award pursuant to the *Fair Work Act 2009*.

Signature

Signature



Name

David Lyons

Date

27 February 2018

Capacity/Position

Applicant's Representative/ Paid Agent