

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)	Liz		
Surname	Gilmour		
Postal address	PO Box 119		
Suburb	North Melbourne		
State or territory	Vic	Postcode	3051
Phone number	03 9825 7237	Fax number	
Email address	liz.gilmour@is.vic.edu.au		

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

Legal name of business	Independent Schools Victoria
Trading name of business	Independent Schools Victoria
ABN/ACN	ABN 44 711 074 857
Contact person	Felicity Nethercote – Lead, Employment Relations Liz Gilmour – Lead, Employment Relations

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			
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

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

Educational Services (Schools) General Staff Award 2010 [MA000076]

1.2 What industry is the employer in?

Educational services

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?

Please see attachment

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. The Fair Work Commission's Statement of 1 April 2020 [[2020] FWCFB 1760] (the Statement) outlines the unique circumstances pertaining to the Covid-19 pandemic.
2. The Statement acknowledges that the Award is a Phase 1 Award and likely to be impacted in the short and medium term as evidenced by ABS data and Professor Borlard's report.
3. As a consequence of this pandemic schools have had to change the way they deliver their educational curriculum and associated offerings to allow for predominant or exclusive remote learning. On 7 April 2020, the Premier of Victoria, Daniel Andrews, announced that following advice from the Chief Health Officer all Victorian government primary, secondary and special schools will move to remote and flexible learning and teaching. Premier Andrews stated that "all children who can learn at home must learn from home – with exceptions only in extremely limited circumstances." On-site learning will only be available for children whose parents can't work from home and vulnerable students without access to a suitable learning environment at home. Victorian independent schools have followed this approach.
4. As a result of the need for remote learning, some work that is performed by employees under the *Educational Services (Schools) General Staff Award 2010* (the Award) has been significantly affected.
5. This application is supported by the Association of Independent Schools New South Wales, Association of Independent Schools South Australia, Association of Independent Schools Western Australia and Independent Schools Tasmania.
6. This application is being made with the consent of the Independent Education of Australia (IEU).
7. The applicant submits, and the IEU agrees, that the variations are necessary to give effect to the modern award objectives, in light of the current situation.

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	Liz Gilmour
Date	23/04/20
Capacity/Position	Lead, Employment Relations



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



MA0000076 PRXXXXXX

DRAFT DETERMINATION

Fair Work Act 2009

s.157—FWC may vary modern awards if necessary to achieve modern awards objective

(AM2020/XX)

EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD 2010

[MA0000076]

Educational services

JUSTICE ROSS, PRESIDENT
XXXXXX
XXXXXX

MELBOURNE, XX XXXX 2020

Application to vary the Educational Services (Schools) General Staff Award 2010.

A. Further to the decision [[2020] FWCFB XXXX] issued by the Full Bench on XX XXX 2020, the above award is varied as follows:

1. By inserting Schedule J as follows:

Schedule J

J.1 The purpose of Schedule J is to assist employers and employees in managing and lessening the effect of the Covid-19 pandemic. It is intended to facilitate keeping employees in work in circumstances where the employer has experienced a significant reduction in income and/or a significant diminution in operation.

J.2 Schedule J operates from XX April 2020 until 1 August 2020. The period of operation can be extended on application.

J.3 During the operation of Schedule J, the following provisions apply:

J.3.1 Direction to reduce hours

- (a) An employer may issue a notice in writing of intention to direct a full-time or part-time employee to reduce their ordinary hours by up to 25% of their ordinary hours. Subject to the terms of this clause, the direction will come into effect 5 days after the notice of intention was issued and will remain in force for a period of no more than 12 weeks.
- (b) Immediately after issuing a notice of intention to direct under clause J.3.1(a) an employer must:
 - (i) discuss the reason behind the direction with the employee or their representative
 - (ii) notify the Independent Education Union of its intention to implement the change(s) in ordinary working hours.
- (c) Where an employer complies with clause J.3.1(b) and the discussions result in a different reduction than that contained in the notice of intention, the employer does not need to provide the 5 day notice period again.
- (d) Upon the expiration of a direction made under clause J.3.1(a), an employer can issue a further notice of intention to direct if the circumstances in clause J.1.1 necessitate.
- (e) An employee given a direction under clause J.3.1(a) will continue to accrue annual leave and personal/carer's leave, and any other applicable accruals under this Award, based on each full-time or part-time employee's ordinary hours of work prior to the reduction in hours occurring as a result of a direction given in accordance with clause J.3.1(a).
- (f) If an employee given a direction under clause J.3.1(a) takes a period of paid annual leave or personal/carer's leave, the payment for that leave will be based on the full-time or part-time employee's ordinary hours of work prior to the reduction in hours as a result of a direction given in accordance with clause J.3.1(a).
- (g) Where an employee typically receives payment during periods of leave without pay in non-term time pursuant to an arrangement under clause 11–Leave without

pay during non-term weeks, the employee will be paid during non-term time at the reduced rate of pay. However, in accordance with clause J.3.1(f) above, this does not apply to a period of annual leave taken during non-term weeks in the relevant year. Upon the conclusion of the direction all such employees will receive payment for subsequent non-term periods at the annualised rate of pay applicable prior to the commencement of the direction.

- (h) Consistent with the temporary basis of this schedule a full-time employee directed to work part-time retains their substantive full-time position.
- (i) Any direction provided pursuant to this clause will not enliven clause 13–Redundancy for any employee. In the event that the employer seeks to affect a larger reduction or to declare the role redundant, an employer will need to comply with clause 8–Consultation and clause 13–Redundancy. Any redundancy payment will be made at the employee’s substantive fraction prior to the issuing of the direction.
- (j) Notwithstanding any other provision in this award an employee whose employment is subject to a 25% reduction consistent with this clause cannot have their ordinary hours of work further reduced.

J.3.2 Operational flexibility

- (a) As directed by their employer, where necessary an employee will perform any duties that are within their skill and competency regardless of their classification under clause 14 and Schedule B – Classification, provided that the duties are safe, and that the employee is licensed and qualified to perform them.
- (b) An employer must not reduce an employee’s pay if the employee is directed to perform duties in accordance with clause.
- (c) Where employees are directed by their employer to perform duties at a higher level than their substantive classification, the higher level classification rates of pay will apply.

J.3.3 Dispute resolution

Any dispute regarding the operation of this Schedule may be referred to the Fair Work Commission in accordance with Clause 9 – Dispute Resolution

2. By updating the table of contents and cross-references accordingly.

B. This determination comes into effect on **XX XXXX 2020**. 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 **XX XXXX 2020**.

PRESIDENT

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