

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 Shop, Distributive and Allied Employees' Association

Postal address 6th Floor, 53 Queen Street

Suburb Melbourne

State or territory Victoria Postcode 3000

Phone number (03) 8611 7000 Fax number

Email address matt@sda.org.au

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

Legal name of business Shop, Distributive and Allied Employees' Association

Trading name of business

ABN/ACN 99 789 302 470

Contact person Matt Galbraith

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	Dominic Macken		
Firm, organisation or company	A J Macken & Co.		
Postal address	11 th Floor, 53 Queen Street		
Suburb	Melbourne		
State or territory	Vic	Postcode	3000
Phone number	(03) 9614 4899	Fax number	
Email address	djmacken@macken.com.au		

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

Alpine Resorts Award 2010 MA000092

1.2 What industry is the employer in?

Alpine resort operations and allied or associated industries

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 Applicant seeks a determination varying the Alpine Resorts Award 2010 (the Award) in the following respect:

Amend 4.1 by inserting the following sentence at the conclusion of clause 4.1.

“...The Award does not cover employees covered by the following awards:

The General Retail Industry Award 2010

The Fast Food Industry Award 2010

The Hair and Beauty Industry Award 2010.”

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 Award presently covers employers throughout Australia who operate an alpine resort and their employees employed at, or in direct connection with the operation of, the alpine resort in the classifications within Schedule B – Classification Definitions to the exclusion of any other modern Award.
2. Schedule B – Classification Definitions in the Award includes employee coverage of persons who, but for the terms in which clause 4.1 is presently expressed, would be persons covered by the General Retail Industry Award 2010, the Fast Food Industry Award 2010 and the Hair and Beauty Industry Award 2010. For example, Resort Worker Levels 2 and 4 cover employees engaged in, inter alia, retail sales and Resort Worker Levels 3 and 6 cover employees engaged as Beauty Therapist and Spa Attendants and Qualified Beauty Therapists. Schedule B – Classification Definitions is expressed in inclusionary terms and the Applicant does not suggest that specific roles mentioned are the only circumstances in which employees presently covered by the Award would otherwise be covered by the aforementioned Awards.
3. The Award provides for considerably inferior safety net terms and conditions of employment for employees who would otherwise be covered by the safety net terms and conditions of employment of the General Retail Industry Award 2010, the Fast Food Industry Award 2010 and the Hair and Beauty Industry Award 2010. By way of but one example, there is no provision in the Award for Saturday and Sunday penalty rates or weekday evening penalty rates.
4. It is, and, with respect, has always been, anomalous that relevant employees covered by the Award performing identical roles to roles covered by the General Retail Industry Award 2010, the Fast Food Industry Award 2010 and the Hair and Beauty Industry Award 2010 do not receive the same safety net conditions of employment which have been determined by the Fair Work Commission to be necessary to achieve the modern awards objective in respect of those Awards.
5. To the extent that the Award by its present terms is providing inferior safety net terms and conditions to employees who would otherwise be covered by the General Retail Industry Award 2010, the Fast Food Industry Award 2010 and the Hair and Beauty Industry Award 2010, the Award is not achieving the modern awards objective in relation to those employees and the Commission ought be satisfied for the purposes of s157 of the (Cth) Fair Work Act 2009 that the proposed variation is necessary to achieve the modern awards objective. The amendment will simply ensure that retail and allied industry employees of alpine resort employers receive the same minimum safety net entitlements that the Commission has already determined meet the modern awards objective for that class of employee in those retail and allied industries. The variation sought does not otherwise prejudice or seek to interfere with provisions of the Award to the extent that it presently covers any other (non-retail) class of employees.

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

Dominic Macken

A J MACKEN & CO.

Date

18 February 2020

Capacity/Position

Solicitoorr



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