



## About the F46 application form

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### Application to make, vary or revoke 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 annual wage reviews.

To be eligible to make an application, you must be an employer, employee, organisation or outworker entity that is or would become covered by the modern award, or be an organisation that is entitled to represent the industrial interests of the person(s) or organisation(s) that are or would become 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 making, varying or revoking 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 (other than varying modern award minimum wages or default fund terms) 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** the system of annual wage reviews if the Commission is satisfied that to do so is:

- justified by work value reasons (s.157(2)(a)),
- necessary to achieve the modern awards objective (s.157(2)(b)), and
- necessary to achieve the minimum wages objective (s.284(2)(b)).

Sections 159 to 161 of the FW Act set out other situations where the Commission may vary a modern award.

## **How the Commission deals with applications to make, vary or revoke modern awards**

Modern award proceedings are generally held in public. Applications and any supporting documents are usually published on the Commission's website for consideration by other interested parties.

In determining an application, the Commission may inform itself as it considers appropriate. This may include asking for formal submissions and supporting evidence from the applicant or other interested parties.

Interested parties can be alerted to new applications and updated on existing award matters through the Commission's [subscription service](#). The Commission's website contains information on how to [subscribe to the service](#).

Applications to make, vary or revoke awards that relate to the Care and Community Sector or those involving gender pay equity matters are determined by Expert Panels. See sections 617 and 620 of the FW Act for information on the constitution of Expert Panels.

## **Lodgment and service of your completed form**

**1. Lodge this application** and any supporting documents with the Commission.

You can lodge this application and any supporting documents by post, fax, email or in person at the [Commission's office](#) in your state or territory.

**2. Lodge an application for directions on procedure.** ([Form F48](#)) for directions on the procedure to be followed in relation to service of your application. The Commission may then direct you to serve a copy of your application and any supporting documents on another party. Service can be effected in a number of ways including by email, express or registered post.

**3.** You may be required by the Commission to serve your application and supporting documents to relevant parties. The Commission will specify the timeframe in which the application and supporting documents are to be served.

## **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](http://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 complete the form.

### Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

You can be represented by a lawyer or paid agent in a conference or hearing about matters arising under Part 2-3 of the FW Act, which includes applications to make, vary or revoke a modern award, unless a Commission Member directs otherwise.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

### Glossary of common terms

**Applicant** – This is the person or organisation that is making an application.

**Lawyer** – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

**Paid agent** – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**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 make, vary or revoke a modern award

Fair Work Act 2009, ss.157–161

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 [ ] Mrs [ ] Ms [ ] Other please specify:		
First name(s)	[REDACTED]		
Surname	[REDACTED]		
Postal address	[REDACTED]		
Suburb	[REDACTED]		
State or territory	NSW	Postcode	[REDACTED]
Phone number	[REDACTED]	Fax number	
Email address	[REDACTED]		

**If the Applicant is not an individual, please also provide the following details**

Applicant's legal name	
Applicant's trading name	
Applicant's ABN/ACN	
Contact person	

**Does the Applicant need an interpreter?**



If the Applicant has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

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	

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Phone number	[REDACTED]	Fax number	
Email address	[REDACTED]		

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.

Rail award

**1.2 What industry is the employer in?**

Rail

**1.3 Does the application relate to the Care and Community Sector?**



The Care and Community Sector includes, but is not limited to, the aged care, early childhood education and care and disability care sectors. Applications to make, vary or revoke awards that relate to the Care and Community Sector are decided by Care and Community Sector Expert Panels. See sections 617(8) and (9) of the FW Act.

Yes

No

Unsure

**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 Does the application seek to vary modern award minimum wages?

Yes

No

## 2.3 Does the application relate to gender pay equity?



Variations to awards relating to substantive gender pay equity matters are decided by pay equity Expert Panels. See sections 617(6) and (9) of the FW Act. See also work value reasons in s.157(2A) and (2B).

Yes

No

Unsure

## 2.4 What are the details of your application?

Outline the changes you are asking the Commission to make. For example - if you are asking the Commission to vary an existing award, you should set out which parts of the award you are asking the Commission to change and how you think these parts should be changed.

Base pay, Travel, LATA  
Night Loading, Tunnel allowance

Attach additional pages, if necessary.

## 2.5 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, and the minimum wages objective if it applies, as well as any additional requirements set out in the FW Act.

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	[Redacted]
Name	[Redacted]
Date	4/01/24
Capacity/Position	[Redacted]



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