



About the F41A application form

Application to vary a copied State instrument

Who can use this form

Use this form if you would like to apply for an order to vary a copied State instrument when there is, or there is likely to be, a transfer of business within the meaning of the *Fair Work Act 2009* (FW Act), under sections 768AX of that Act. A “copied State instrument” is a federal instrument enforceable under the FW Act that contains the terms and conditions in a State award or State employment agreement when there is a transfer of employment from a non-national system State public sector employer to a new national system employer.

An application may be made by:

- a person who is, or is likely to be, covered by the transferable instrument; or
- an employee organisation that is entitled to represent the industrial interests of an employee who is or is likely to be covered by the copied State instrument.

About applications for orders in relation to a transfer of business

If there is a transfer of business within the meaning of section 768AD of the FW Act, a State award or State employment agreement that previously covered an employee of the old (State public sector) employer will transfer to cover the transferring employee and become binding on the new employer as a copied State instrument. Usually, an instrument that transfers under the FW Act will displace any agreement or award that would otherwise apply to the transferring employee.

The Fair Work Commission (Commission) either on receiving an application, or on its own initiative, may vary a copied State instrument for a transferring employee under section 768AX(1) to:

- remove terms that the Commission is satisfied are not, or will not be, capable of meaningful operation or to vary those terms so that they are capable of meaningful operation;
- remove an ambiguity or uncertainty in the instrument;
- enable the instrument to operate in a way that is better aligned with the working arrangements of the new employer’s enterprise;
- resolve an uncertainty or difficulty relating to the interaction between the instrument and the National Employment Standards (NES), or so that it operates effectively with the those standards (sub-section 768AX(4) provides further details as to how the Commission will undertake this assessment);
- in the case of a copied State employment agreement, resolve any difficulty relating to the interaction of that instrument with a modern award; or

- remove terms inconsistent with the general protections provisions in the FW Act (Part 3-1), or so that any terms are consistent with those protections.

A variation may be made before the instrument comes into operation, and before an employee becomes a transferring employee. It will operate from the day specified in the order (and it may operate with retrospective effect).

Lodgment and service of your completed form

1. **Lodge your application** along with any accompanying documents with the Commission. You can lodge your application by post, by fax or by email or in person at the [Commission office](#) in your state or territory.
2. You must **serve a copy of this application and any supporting documents** on the other parties to the copied State instrument, any employee organisation that represents the industrial interests of the transferring employees and the new employer as soon as practicable after the application is lodged with the Commission (*Fair Work Commission Rules*, rule 41 and Schedule 1). You can serve a copy of the application and supporting documents by email, express post, or registered post.

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 also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

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.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member

dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person's lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person's behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person or
- a bargaining representative that is representing the person or
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

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 F41A – Application to vary a copied State instrument

Fair Work Act 2009, section 768AX

This is an application to vary a copied State instrument under s.768AX of the *Fair Work Act 2009*, when there is or is likely to be a transfer of business.

The Applicant



These are the details of the person who is lodging the application with the Commission.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the Applicant is an organisation please also provide the following details

Legal name of organisation	
Trading name of organisation	
ABN/ACN	
Contact person	

Do you need an interpreter?



If you have 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

Do you require any special assistance at the hearing or conference (eg a hearing loop)?

Yes – Please specify the assistance required

No

Do you have a representative?



A representative is a person or organisation who is representing you. This might be a lawyer or paid agent, a union 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 that is representing the Applicant (if any).

Name of person			
Firm, union or company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Is your representative a lawyer or paid agent?

Yes

No

1. Preliminary

1.1 What is the name of the copied State instrument to which this application relates? Please specify whether the instrument is a copied State award or copied State employment agreement.



You must also attach a copy of the instrument (*Fair Work Commission Rules 2013*, sub-rule 34 (3)).

1.2 What is the industry of the employer?

1.3 What is the nominal expiry date of the instrument?

2. Orders

2.1 Please specify the terms of the variation that you are seeking.

Attach additional pages if necessary.

2.2 Using numbered paragraphs, set out the grounds on which you rely in making this application.

In determining whether to make the variation sought, the Commission will consider the criteria set out in s.768AX (3) of the FW Act. You may wish to address any such criteria below.

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 or common seal	
Name	
Date	
Capacity/Position	

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS