

# About the F46 application form

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## Application to vary 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 the 4 yearly reviews of modern awards (4 yearly reviews) or the annual wage reviews.

You must be a person, organisation or outworker entity covered by the modern award to be eligible to make an application, or be an organisation that is entitled to represent the industrial interests of the person(s) or organisation(s) that are 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 varying 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 **outside** of the system of 4 yearly reviews 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** of the 4 yearly review and the system of annual wage reviews if the Commission is satisfied that to do so is:

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

Note: section 157 to 160 of the FW Act set out other situations where the Commission may vary a modern award.

See the Commission's [Awards and Agreements](#) web page for more information about the 4 yearly review and the annual wage review.

## Lodgement and service of your completed form

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

You can lodge your application by post, by fax or by email or in person at the [Commission's office](#) in your State or Territory.

**2. Serve a copy of your application and any supporting documents** on each Respondent listed in the application as soon as practicable after lodging with the Commission. You can send this application and supporting documents in a number of ways, including by email or by express 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](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 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 F53A – Notice that a person will seek permission for 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. However, the requirement to give notice and seek permission does not apply to matters arising under Part 2-3 of the [Fair Work Act 2009](#).

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, also 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.

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 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 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 a company or organisation please also provide the following details

Legal name of business	ASSOCIATION OF PROFESSIONAL ENGINEERS SCIENTISTS MANAGERS AUSTRALIA (APESMA)
Trading name of business	PROFESSIONALS AUSTRALIA
ABN/ACN	
Contact person	MICHELLE ANTHONY

### 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 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

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2020 MA000027

### 1.2 What industry is the employer in?

HEALTH INDUSTRY

## 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?

1. Variation is sought to the Coverage clause of the Award (Clause 4), by inserting a new subclause (c) after Clause 4.1(b), the effect of which will extend occupational coverage of the Award to Translators and Interpreters.
2. It is also proposed to insert a new Schedule K –Translators and Interpreters, which will contain Classification Definitions for Translators and Interpreters.
3. Delete obsolete references to “unqualified interpreter” and “qualified interpreter” in Schedule A – Classification Definitions.

#### **Draft orders sought:**

[A] Amend Clause 4 – by inserting a new subclause (c) at the end of Clause 4.1(b);

and insert a new Clause 4.8 as set out below

#### 4. Coverage

4.1 This industry and occupational award covers:

(a) employers throughout Australia in the health industry and their employees in the classifications listed in clauses 14—Minimum weekly wages for Support Services employees and 15—Minimum weekly wages for Health Professional employees to the exclusion of any other modern award;

(b) employers engaging a health professional employee falling within the classification listed in clause 15.

(c) employers throughout Australia engaging employees performing translating and interpreting duties who are covered by the classifications set out in Schedule K.

[B] Amend Clause 4- by inserting a new Clause 4.8 as set out below

4.8 Without limiting the generality of the foregoing this award does not cover employers covered by the following industry awards with respect to employees covered by the awards:

- Aged Care Award 2010;
- Amusement, Events and Recreation Award 2020;
- Broadcasting, Recorded Entertainment and Cinemas Award 2010.

[C] Schedule A—Classification Definitions; A.1.5 (b) Support Services employee—level 5 – by deleting “**Interpreter (unqualified)**”;

[D] Schedule A—Classification Definitions; A.1.7 (b) Support Services employee—level 7 – by deleting “**Interpreter (qualified)**”;

[E] Clause 2. Definitions and interpretation – Insert at the appropriate place, maintaining the alphabetical order of the terms to be defined, the following terms and definitions:

**Certified Advanced Translator** means an individual certified by NAATI as a Certified Advanced Translator.

**Certified Conference Interpreter** means an individual certified by NAATI as a Certified Conference Interpreter.

**Certified Interpreter** means an individual certified by NAATI as a Certified Interpreter.

**Certified Provisional Interpreter** means an individual certified by NAATI as a Certified Provisional Interpreter;

**Certified Specialist Interpreter (Health and Legal)** means an individual certified by NAATI as a Certified Specialist Interpreter (Health and Legal)

**Certified Translator** means an individual certified by NAATI as a Certified Translator.

**NAATI** means National Accreditation Authority for Translators and Interpreters Ltd.

**Recognized Practising Interpreter** means an individual certified by NAATI as a Recognized Practising Interpreter

**Recognized Practising Translator** means an individual certified by NAATI as a Recognized Practising Translator

[F] Insert a new **Schedule K –Translators and Interpreters** as per the attached.

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 Association of Professional Engineers Scientists Managers Australia (APESMA) is making application to vary the Health Professionals and Support Services Award 2020 (the Award) to achieve occupational coverage of the Award for Translators and Interpreters.
2. There are eleven Modern awards that contain references to translators and / or interpreters. Of the eleven, seven make provision for employees who are covered by those awards in a different occupational capacity to receive an allowance where the employee is bilingual and uses his / her language skills in the course of providing client or staff services.
3. Four of the eleven Modern awards include interpreter or “subtitler” as classifications or indicative roles covered by the Award.
4. Of the four, the Health Professionals and Support Services Award 2020 is the Modern award under which the vast majority (an estimated 70 to 80%) of the work of translators and interpreters is performed.



5. Interpreters who are employed under one of the other three awards which have ‘interpreter’ as a classification, will continue to be covered by those awards even if this application to vary the Health Professionals and Support Services Award 2020 is successful.

**How the variation sought meets the ‘modern awards objective ‘**

6. Section 134(1) of the Fair Work Act (2009) (**the FW Act**) sets out the considerations the Fair Work Commission must take into account when ensuring that the Award, together with the National Employment Standards, provides a “fair and relevant minimum safety net of terms and conditions”. APESMA’s submissions in relation to each consideration is referred to under separate headings below:

***(a) relative living standards and the needs of the low paid; and***

7. The Australian Bureau of Statistics 2016 Census data confirmed the median annualised reported income for translators and interpreters in Australia is:

- a. Translators: \$ 40,417.
- b. Interpreters: \$ 34,497.

8. In 2015 APESMA surveyed more than 900 translators and interpreters across Australia and the survey showed more than half (60 per cent) of the interpreting workforce surveyed earned less than \$20,000.00 annually and only seven per cent earned above \$60,000.00. To earn this income, the practitioners surveyed worked on average, 24 hours a week, despite the majority of the workforce wishing to work more.<sup>1</sup> APESMA’s members report that many find it impossible to earn more than this level of annual income as they are typically engaged on a casual basis to perform

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<sup>1</sup>[http://www.professionalsaustralia.org.au/translators-interpreters/download/ti\\_submissions/2016-Victorian-Government-Review-Making-the-Case.pdf](http://www.professionalsaustralia.org.au/translators-interpreters/download/ti_submissions/2016-Victorian-Government-Review-Making-the-Case.pdf)

interpreting jobs often of 90 minutes duration. By the time interpreters factor in travelling and parking time (for which they are generally not reimbursed), interpreters are usually limited to performing a maximum of approximately 3 to 4 interpreting jobs per day.

9. The current model by which translators and interpreters are engaged means that often practitioners are engaged on a casual and / or part time basis and are required to hold concurrent employment with a few employers and / or agencies at the same time if they wish to work full time or the maximum number of hours they can each week. Currently, an interpreter that is employed in an interpreting job in the health care industry in the morning will be covered by the Award in the morning, but should his or her afternoon engagement be (for example) in a court setting, the interpreter will not be entitled to the protections and minimum safety net provided by the Award while performing the same occupation in the afternoon. If the Award is varied to provide occupational coverage to interpreters and translators then a significant step will have been taken to ensure a consistently applied safety net of minimum terms and conditions has been provided to a particularly low paid and vulnerable class of employees.

***(b) the need to encourage collective bargaining; and***

10. Currently there is confusion and uncertainty within the Language Services industry regarding award coverage. Typically, employers of language services practitioners express the view to APESMA that interpreters and translators are not award covered and are surprised to learn the Award currently covers interpreters for all work they perform in the Health industry. If the Award is varied so that all work performed by translators and interpreters is covered consistently by the Award, employers and employees alike will be provided with the certainty of a consistent set of minimum terms and conditions that can provide a platform for the commencement of collective bargaining.

***(c) the need to promote social inclusion through increased workforce participation; and***

11. Typically, Translators and Interpreters are engaged on a casual or part time basis and as a result many practitioners hold concurrent employment with more than one employer and / or are engaged by an agency as a contractor while being employed at the same time as a casual employee by another agency. Practitioners are paid by the job and often are not paid for their travelling time or expenses. This has led to overall poor levels of remuneration and conditions. As a result the Translating and Interpreting workforce has a high rate of turnover. APESMA's 2015 survey indicated that of the surveyed population, the average practitioner was a woman in her late forties earning less than the full-time minimum wage. Further the responses of the surveyed population indicated that the workforce is ageing and those practitioners leaving are not being replaced by a new generation. While the variation sought will have no change on the Award rates of pay, the variation will provide consistency of award coverage for members of the profession to avoid the situation whereby practitioners "fall through the cracks" of award coverage if they take interpreting jobs that are outside the health industry to supplement their income.

***(d) the need to promote flexible modern work practices and the efficient and productive performance of work; and***

12. Over the last 25-30 years there has been a dramatic change in the way translating and interpreting services are delivered. The primary clients or end users of translators and interpreters, Federal and State Government departments and agencies (including most significantly health industry agencies), previously typically employed Translators and Interpreters as full or part time employees. Those departments and agencies now typically engage Translators and Interpreters as casual employees or via organisations known as 'agencies' performing a brokering role, with the agencies entering into principal contracts with the government department or agency for the provision of the translation and interpreting services, often in response to tendering processes. The agencies in turn enter into agreements with individual translators and interpreters, with the translator or interpreter either becoming the casual employee of the agency or entering into an individual contractor agreement for the provision of services. In APESMA's submission, 'flexible modern work practices' have

undoubtedly already been put in place as the result of the changes referred to above. A consistent set of minimum award conditions that provides protection for Translators and Interpreters to ensure the ongoing viability and sustainability of those ‘flexible modern work practices’ has now become critical.

***(da) the need to provide additional remuneration for:***

***(i) employees working overtime; or***

***(ii) employees working unsocial, irregular or unpredictable hours; or***

***(iii) employees working on weekends or public holidays; or***

***(iv) employees working shifts; and***

13. This is a neutral consideration in this matter.

***(e) the principle of equal remuneration for work of equal or comparable value; and***

14. As Professionals, it is APESMA’s submission that Translators and Interpreters should have coverage by the Award as an occupational award so that individual practitioners will work under a common set of consistently applied minimum conditions, regardless of whether the practitioner works in an environment outside the health industry from time to time. Having a primary Award that covers the vast majority of language services practitioners will mean that employers and employees will have a point of reference to make comparisons for the purpose of establishing whether the principle of equal remuneration for work of equal comparable value is being applied in the language services industry.

***(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and***

15. APESMA does not anticipate that the variation sought will have any impact on employment costs or productivity other than to provide a greater level of certainty and consistency for both business and government agencies around award coverage of interpreters. An improved level of certainty for business and government agencies around minimum award conditions for interpreters and translators can then be factored into the budget processes of government agencies and employers.

***(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and***

16. In APESMA's submission, the variation sought achieves the objective set out in s134(1)(g) of the FW Act as the Health Professionals and Support Services Award 2020 will become the occupational award for Translators and Interpreters with the exception of any interpreters or translators that fall within the Coverage and Classifications clauses of the three Awards referred to in paragraph 5 above (**'the three other Awards'**). Those three other Awards are:

(a) Aged Care Award 2010 [MA000018];

(b) Amusement, Events and Recreation Award 2020 [MA000080];

and

(c) Broadcasting, Recorded Entertainment and Cinemas Award 2010 [MA000091]

17. The primary purchasers of interpreting services in Australia are government departments including but not limited to those involved in health and medical services, court/legal services, social security/welfare and immigration. A recent report into Multicultural Affairs by the Victorian Government illustrates that of the annual overall budget of \$33,652,230.00 spent on Translators and Interpreters by Victorian Government departments, 72.8 % of that budget was spent on health and medical services, 6.4% on court / legal services and 7.3% on Department of Justice

and Regulation (including police and criminal matters).<sup>2</sup> This Victorian Government report provides support for the contention that 70 to 80% of interpreting and translating work is performed in the health industry and so it is appropriate that the Health Professionals and Support Services Award 2020 become the primary award providing occupational coverage of interpreters and translators.

18. The coverage clauses of ‘the three other awards’ make it clear that where an employer is covered by more than one award, a particular employee will be covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work. This means that where an interpreter is employed by an employer in the Aged care industry, if the classification of interpreter found in Schedule B to the Aged Care Award 2010 is the most appropriate classification to cover the employee taking into account her work and the environment in which she normally performs the work, then that employee will be covered by the Aged Care Award 2010. As a result, we do not see “unnecessary overlap of modern awards” occurring should the variation sought be granted.

***(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.***

19. To the extent that the proposed variations are consistent with sections 134(1) (a), (b), (c), (d), (f) and (g), it is APESMA’s submission that they will have a positive impact on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

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<sup>2</sup> Victorian Government Report in Multicultural Affairs 2016 – 17; Appendix 3, page 67  
<https://www.multicultural.vic.gov.au/images/2018/Victorian-Government-Report-in-Multicultural-Affairs-201617.pdf>

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	Michelle Maree Anthony
Date	18 August 2020
Capacity/Position	Acting Director, Association of Professional Engineers Scientists, Managers Australia



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**