

## 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     | Level 7, No.50 Martin Place   |            |      |
| Suburb             | Sydney  |            |      |
| State or territory | NSW   | Postcode   | 2000 |
| Phone number       | 0419 481 196  | Fax number |      |
| Email address      | Sheila.Bayliss@macquarie.com  |            |      |

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

|                          |   |
|--------------------------|---|
| Legal name of business   | Macquarie Bank Limited                                    |
| Trading name of business | Macquarie   |
| ABN/ACN                  | 46 008 583 542  |
| Contact person           | Sheila Bayliss, Regional Lead of Employee Relations (ANZ) |

**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                | Steven Amendola / Peter Willink |          |      |
| Firm, organisation or company | Kingston Reid                   |          |      |
| Postal address                | Level 17, 459 Collins Street    |          |      |
| Suburb                        | Melbourne                       |          |      |
| State or territory            | VIC                             | Postcode | 3000 |

|               |  |            |     |
|---------------|--|------------|-----|
| Phone number  | (03) 9958 9606   | Fax number | n/a |
| Email address | steven.amendola@kingstonreid.com<br>peter.willink@kingstonreid.com |            |     |

**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

*Banking, Finance and Insurance Award 2020 (BFI Award)*

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

Banking, finance and insurance 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. This application is being made pursuant to section 158 of the *Fair Work Act 2009* (Cth) (**Act**).
2. The applicant, Macquarie Bank Limited (**Macquarie**) is an employer that is covered by the *Banking and Finance Award 2020* (**BFI Award**).
3. Macquarie seeks a determination pursuant to section 157 of the Act varying the BFI Award by introducing exemption rates of pay for classification levels 5 and 6. The proposed variation is set out in **Attachment A** to this application.

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. As an employer covered by the BFI Award, Macquarie has standing to bring an application under section 158 of the Act to vary the modern award.
2. The objective of this application is to simplify the pay arrangements for those employees who fall into the two most senior classifications in the BFI Award through the introduction of exemption rates of pay.
3. The application is directed at BFI Award classification levels 5 and 6. Both classifications are relatively senior positions compared with other modern awards in the sense that they are specialised and/or managerial roles.
4. The seniority of the classifications is evident from the definitions, which are in Schedule A of the BFI Award at sub-clauses A.5 and A.6. Level 5 employees exercise “*considerable discretion and/or are responsible for operational planning.*” They may be “*specialised*” and supported by one or two junior employees, or in a “*managerial role (managing 5-10 employees) responsible for the operation of part or parts of the business*”. A level 6 employee “*typically performs a middle management role primarily to control the conduct of a part of the employer’s business.*” Employees who manage 10 or more people *must* be classified as Level 6 (provided they are not otherwise excluded from award coverage under the Act).
5. The intended effect of the variation is that certain provisions of the BFI Award would no longer apply to an employee classified as either level 5 or 6 and whose salary is at least 50 percent above the minimum award rate. This would mean a range of employee records would no longer have to be created or retained.

6. Simplified pay arrangements in the form of exemption rates will reduce the regulatory and administrative impact on Macquarie and its employees. Macquarie is a significant employer in the banking, finance and insurance industry in Australia. It is a subsidiary of Macquarie Group Limited and is part of a group of associated companies that collectively employs over 8,000 people in Australia. With no enterprise agreement in place, it is also one of the largest workforces to which the BFI Award directly applies. Beyond Macquarie, this variation to the award would have a beneficial impact on the broader industry by simplifying level 5 and Level 6 award compliance.
7. The BFI Award in its current form inhibits the flexible working practices that have become increasingly prevalent since the COVID-19 pandemic. In circumstances where an employee's earnings are substantially higher than the minimum rates of pay under the BFI Award, curtailment of flexible working is not consistent with the modern awards objective. In such circumstances, and together with the NES and those other clauses of the BFI Award that are not exempt, the higher rate of pay provides a safety net which is both fair and relevant.
8. The Fair Work Commission can be satisfied that making the determination will achieve the modern awards objective, having particular regard to:
  - a. Section 134(1)(a) - relative living standards and the needs of the low paid;
  - b. Section 134(1)(c) - the need to promote social inclusion through increased workforce participation;
  - c. Section 134(1)(d) - the need to promote flexible modern work practices and the efficient and productive performance of work;
  - d. Section 134(1)(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;
  - e. Section 134(1)(f) - the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;
  - f. Section 134(1)(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
  - g. Section 134(1)(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.

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.

FAIR WORK COMMISSION

Form F46 – Application to vary a modern award

|                   |   |
|-------------------|---|
| Signature         |  |
| Name              | Steven Amendola   |
| Date              | 26 August 2022  |
| Capacity/Position | Partner, Kingston Reid<br>Solicitors for the Applicant                            |



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

**Attachment A**

## **DRAFT DETERMINATION**

*Fair Work Act 2009*

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

### **Banking, Finance and Insurance Award 2020**

(AM2022/XX)

JUSTICE ROSS, PRESIDENT

LOCATION, XX XXXX 2022

Further to the decision [2022 XXX XXXX] issued by the Fair Work Commission on XX XXX 2022, the Banking, Finance and Insurance Award 2020 is varied as follows:

1. By inserting the following clause:

**15.3 Non-application of particular provisions of this award to employees within particular classifications receiving specified salaries**

**(a) Levels 5–6**

**(i)** Subject to the requirements of the NES, the provisions of clauses:

- 13—Ordinary hours of work and rostering;
- 14.1—Meal breaks;
- 18—Allowances
- 20—Overtime
- 21—Penalty rates
- 22.3—Annual leave loading
- 27.4—Work on a public holiday
- H.2(e)—Part-day Public Holidays

will not apply to a level 5 or 6 employee receiving a salary in excess of **50%** above the minimum annual rate for the appropriate classification prescribed in Schedule A—Classification Definitions.

PRESIDENT