

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)	Russell		
Surname	Zimmerman		
Postal address	Level 1, 112 Wellington Parade		
Suburb	East Melbourne		
State or territory	VIC	Postcode	3002
Phone number	1300 368 041	Fax number	
Email address	Russell.Zimmerman@retail.org.au		

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

Legal name of business	The Australian Retailers Association
Trading name of business	Australian Retailers Association
ABN/ACN	99 064 713 718
Contact person	Russell Zimmerman

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 business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. 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 business who is representing the Applicant.

Name of person	Nick Tindley		
Organisation	FCB Group		
Postal address	PO Box 58		
Suburb	Collins Street West		
State or territory	VIC	Postcode	8007
Phone number	03 9098 9403	Fax number	03 9098 9499
Email address	nrt@fcbgroup.com.au		

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

MA000004 – General Retail Industry Award 2010

1.2 What industry is the employer in?

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 application will vary the *General Retail Industry Award 2010 (GRIA)* to reduce the loading payable to shiftworkers who work on Sundays. A Draft Determination is attached 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. On 23 February 2017 a Full Bench of the Fair Work Commission issued the Penalty Rates Decision ([2017] FWCFB 1001) (**Decision**).
2. In the Decision the Commission concluded that the Sunday penalty rate under the GRIA is neither fair nor relevant, and determined to reduce that penalty rate.
3. The loading applicable to shiftworkers for work performed on Sundays is intended to compensate for the disutility associated with Sunday work and the separate disutility associated with shiftwork.
4. Given the Commission has concluded that the aspect of the Sunday shiftwork loading which applies to Sunday work is not fair or relevant, it follows that the shiftwork loading in total is not fair and relevant.
5. Such other grounds identified by the Commission.

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	Nick Tindley
Date	28 July 2017
Capacity/Position	Representative of 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

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FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009
Part 2-3, Div 4 – 4 Yearly reviews of modern awards

General Retail Industry Award 2010

[MA000004]

Retail industry

COMMISSION MEMBERS

MELBOURNE, XX YYY ZZZZ

Review of modern awards to be conducted.

Further to the Decision and Reasons for Decision <<DecisionRef>> in <<MatterRef>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *General Retail Industry Award 2010* be varied as follows:

[1] By amending clause 30.3(c) as follows:

Any shiftwork performed on a Sunday will be paid at the rate of ~~200~~175% (~~225~~200% for casuals) of the ordinary time rate of pay.

The determination shall operate on and from XX YYY ZZZZ.

BY THE COMMISSION