



# About the F1 Application Form

## Application (no specific form provided)

### When to use this form

You can use this form if you would like to make an application to the Fair Work Commission (the Commission) and there is no specific form provided.

Please carefully check the [Forms](#) page of the Commission's website before using this form. If there is a specific approved form for your purpose, you must use the approved form that is available on the Commission's website.

### Lodgment and service of your completed form

1. **Lodge your application** along with any accompanying documents with the Commission. You can lodge your application online using the [Commission's Online Lodgment Service \(OLS\)](#) or 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 this application on the Respondent as soon as possible after lodging this application with the Commission.

If you are unsure about the service requirements for your particular application, you can seek directions from the Commission by lodging a Form F48—Applications for Directions on Procedure.

### 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 lawyer, union official or family member) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when

you appear at the Commission. You will need the permission of the Commission Member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

- employed by a union or employer organisation, a peak union or peak employer body, or
- one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

## **Glossary of common terms**

**Appellant**—This is the person or organisation lodging an appeal.

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

**Jurisdictional objection**—This is a type of objection a Respondent can raise to an application. A Respondent can make this kind of objection if they think that the Commission, for a technical or legal reason, cannot hear 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 F1—Application (No Specific Form Provided)

Fair Work Commission Rules 2013, subrule 8(3) and Schedule 1

This is an application to the Fair Work Commission.

### The Applicant



These are the details of the person who is making the application.

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

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

<b>Legal name of business</b>	Restaurant and Catering Industrial
<b>Trading name of business</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	Ms Marianne Wells, In-House Counsel

### How would you prefer us to communicate with you?

Email (you will need to make sure you check your email account regularly)

Post

### Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, a union or a family member or friend who will speak on behalf of the Applicant. 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.

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

## The Respondent



These are the details of the person or business who will be responding to your application to the Commission.

<b>Title</b>	[ ] Mr [ ] Mrs [ ] Ms [ ] Other please specify:		
<b>First name(s)</b>			
<b>Surname</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

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

<b>Legal name of business</b>	United Voice
<b>Trading name of business</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	Mr Stephen Bull, Industrial Coordinator/Legal Practitioner

## 1. The Application

### 1.1 Please set out the provision(s) of the Fair Work Act 2009 (or any other relevant legislation) under which you are making this application.

The application is made within the current four yearly review pursuant to s156

## 2. Order or relief sought

### 2.1 Please set out the order or relief sought.



Using numbered paragraphs, set out what you are asking the Commission to do.

1. Amend the table in section 34.1 of the *Restaurant Industry Award* to read as follows:

Type of employment	Monday to Friday	Saturday	Sunday	Public holidays
	%	%	%	%
Full-time and part-time	100	125	<del>150</del> 125	225
Casual Introductory Level, Level 1, Level 2 (inclusive of 25% casual loading)	125	150	150	250
Casual Level 3 to Level 6 (inclusive of casual 25% loading)	125	150	175	250

**2.2 Please set out grounds for the order or relief sought.**



Using numbered paragraphs, set out the grounds, including particulars, on which you are seeking the relief set out in question 2.1.

See attached submission

**3. The employer**

**3.1 What is the industry of the employer?**

**4. Industrial instrument(s)**

**4.1 Please set out any modern award, agreement or other industrial instrument relevant to the application and their ID/Code number(s) if known.**

Restaurant Industry Award 2010

## 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.

<b>Signature</b>	<i>MWells</i>
<b>Name</b>	Marianne Wells
<b>Date</b>	28 July 2017



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**

## IN THE FAIR WORK COMMISSION

### SUBMISSION OF RESTAURANT & CATERING INDUSTRIAL PURSUANT TO

### THE STATEMENT OF THE FULL BENCH ISSUED ON 6 JULY 2017

#### Full Bench Statement

1. The Full Bench issued a Statement dated 6 July 2017. RCI make these submissions pursuant to that Statement.
2. RCI advises the Commission that it intends to pursue its application to reduce penalty rates as part of the current 4 yearly review of modern awards to ensure the *Restaurant Industry Award 2010 (the Award)* achieves the modern awards objective as defined in s134 of the Fair Work Act 2009 (Cth) (FW Act).

#### Grounds of application

3. Restaurant & Catering Industrial (RCI) is an organisation registered under the Fair Work (Registered Organisations) Act 2009.
4. RCI represents the interests of some 35,000 restaurants, cafes and catering establishments across Australia.
5. The Fair Work Commission handed down its decision in respect of the 4 yearly review of modern awards – Penalty Rates case (**'2017 Penalty Rates Case'**) on 23 February 2017 (**the Primary Decision**)<sup>1</sup> and the Transitional Arrangements decision issued on 5 June 2017.
6. At [1157] of the 2017 Penalty Rates Case the Full Bench said:

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<sup>1</sup> [2017] FWCFB 1001

*We propose to provide RCI (and any other interested party) with a further opportunity to seek to establish that the weekend penalty rates in the Restaurant Award do not provide a 'fair and relevant minimum safety net'.*

7. The basis for doing so was at [1156]:

*If these were simply inter partes proceedings we would dismiss the RCI claim. But the claim has been made in the context of the Review and s.156 imposes an obligation on the Commission to review each modern award.*

8. The matter, in RCI's submission, goes to jurisdiction. The Full Bench was correct to highlight that a lack of evidence and a failure to deal adequately with a previous Full Bench decision meant that it could not discharge its function under s156 of the FW Act. In other words, to find against RCI by dismissing its application to amend the *Restaurant Industry Award 2010* may have led to jurisdictional error.

9. RCI submits that the Full Bench has identified that to properly discharge its functions under s156 of the FW Act, a further opportunity should be provided to RCI to litigate its claim.

### Outline of claim

10. RCI's application seeks to vary the *Restaurant Industry Award 2010* to reduce Sunday penalty rates as outlined in the table below.

Type of employment	Monday to Friday	Saturday	Sunday	Public holidays
	%	%	%	%
Full-time and part-time	100	125	150-125	225
Casual Introductory Level, Level 1, Level 2 (inclusive of 25% casual loading)	125	150	150	250
Casual Level 3 to Level 6 (inclusive of casual 25% loading)	125	150	175	250

□

11. Indeed, as noted by the Full Bench in the Primary Decision<sup>2</sup>, RCI's claim in the Four yearly review of modern awards - Penalty Rates, was similar to the claim which was considered by the Full Bench in the 2014 Restaurants Penalty Rates case ('**2014 Penalty Rates Case**')<sup>3</sup>, and which RCI again seeks to pursue, excluding claims in respect of late night and public holiday penalties.
12. RCI submits that given the findings of the Full Bench in the 2017 Penalty Rates Case in reducing penalty rates in the hospitality and retail awards, it is important that reduction in penalty rates in the restaurant, café and catering industry be given full and proper consideration, to determine whether the Award provides a fair and relevant minimum safety net of terms and conditions, as required pursuant to the modern awards objective under s134 of the FW Act.
13. In addition, should RCI be granted an opportunity to further pursue the variation to the Award, RCI will deal with the deficiencies in its case in the 2017 Penalty Rates Case.
14. The Full Bench criticised RCI's failure to address the decision of the 2014 Penalty Rates Case<sup>4</sup>, including a failure to provide evidence regarding its impact, in particular evidence of *'positive employment effects or service improvements'* as a result of the reduction in Sunday penalty rates for levels 1 and 2 casual employees, as outlined by the Full Bench in the Primary Decision<sup>5</sup> and the Transitional Arrangements decision.<sup>6</sup>
15. In response to the criticism as to the lack of evidence showing the impact of the 2014 Penalty Rates Case, RCI submits that this was due to the following:
  - a. the time restriction between the implementation of the 2014 Penalty Rates Case decision on 1 July 2014 in accordance with the phasing provisions clause in the Restaurant Award<sup>7</sup>, and

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<sup>2</sup> Ibid at 1148.

<sup>3</sup> [2014] FWCFB 1996.

<sup>4</sup> [2017] FWCFB 1001 at [1144]

<sup>5</sup> [2017] FWCFB 1001 at 1151 and 1152.

<sup>6</sup> [2017] FWCFB 3001 at 237.

<sup>7</sup> [2014] FWCFB 1996 at 83.

- b. the requirement for RCI to file evidence in respect of its claim in the 2017 Penalty Rates Case by 1 May 2015 and 29 June 2015, and
- c. the Commission's revised timetable directions that the evidentiary hearing be concluded by 28 August 2015.<sup>8</sup>

16. RCI submits that a period of less than one year was an insufficient timeframe for businesses to measure the impact of changes made in the Award in 2014 and to have the results prior to preparing and collating such evidence for the four yearly review.

17. RCI submits the importance of taking into account the 'likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden'<sup>9</sup>. It is paramount that the interests of employees and employers alike are fairly balanced to achieve the modern awards objective.

18. RCI submits that the existing Sunday penalty rates is neither 'fair' or 'relevant' as those terms are defined in chapter three of the Primary Decision. The principle of 'fairness' should be considered from the perspective of employees and employers covered by the Award.<sup>10</sup>

19. RCI submits that the proposed variation would achieve the modern award objectives in the restaurant, café and catering industry by removing disincentives and barriers which exist.

### **Proposed course of action**

20. RCI proposes the following course of action:

- a. That the matter be listed for directions as to whether RCI should be provided with a further opportunity to litigate its claim;
- b. The directions include a timetable for filing and serving of submissions by RCI on interested parties;

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<sup>8</sup> Fair Work Commission Statement dated 3 March 2015.

<sup>9</sup> 134(1)(f)

<sup>10</sup> <sup>10</sup> [2017] FWCFB 1001 at 37, 117, 118, 151, 885, 1701, 1877, 1948.

- c. The directions include a timetable for filing and serving of submissions by interested parties on RCI;
- d. That the matter be allocated a hearing of one day.

21. For the above reasons RCI submits that it should be provided with a further opportunity to litigate its claim.

## **Restaurant and Catering Industrial**