

## 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 checked="" type="checkbox"/> Other please specify:		
First name(s)	N/A		
Surname	N/A		
Postal address	833 Bourke Street		
Suburb	Docklands		
State or territory	Victoria	Postcode	3008
Phone number	0412 199 787	Fax number	03 9235 7770
Email address	<a href="mailto:stephen.bull@unitedworkers.org.au">stephen.bull@unitedworkers.org.au</a> : or <a href="mailto:ben.redfern@unitedworkers.org.au">ben.redfern@unitedworkers.org.au</a>		

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

Legal name of business	United Workers' Union
Trading name of business	As above
ABN/ACN	52 72 8088 684
Contact person	Stephen Bull (M. 0412 199 787) 303 Cleveland Street Redfern, NSW, 2016.

### 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 (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	N/A		
Firm, organisation or company	N/A		
Postal address	N/A		
Suburb	N/A		
State or territory	N/A	Postcode	N/A
Phone number	N/A	Fax number	N/A
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

*Restaurant Industry Award 2020 [MA000119]*

### 1.2 What industry is the employer in?

Restaurants

## 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?

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.

### Background

1. The variation proposed by the Applicant relates to the COVID-19 Pandemic.
2. On 8 April 2020, the Fair Work Commission (FWC) issued a decision ([2020] FWCFB 1837) which modified a number of Modern Awards to insert a new Schedule – ‘*Schedule X: Additional measures during the COVID-19 pandemic*’.
3. The *Restaurant Industry Award 2020* was one of the Awards so modified.
4. Schedule X provides an entitlement to unpaid ‘*pandemic leave*’ and the flexibility to take twice as much annual leave at half pay.
5. In a Statement issued on 23 June 2020, the FWC stated that it did not propose to extend the operation of Schedule X beyond 30 June 2020, and that any party seeking to do so could apply by 26 June 2020.

### Reasons for Extension

6. The COVID-19 pandemic continues to affect Australian workers, and the lasting duration of its effect is difficult to predict, but could be anticipated to last for the remainder of 2020 and at least into 2021. At any rate, the pandemic will continue to affect workers beyond 30 June 2020.
7. No legislative changes alter the correctness of the legal reasoning in paragraphs [68]-[70] and [74] of the decision [2020] FWCFB 1837 as to the need to preserve the employment relationship where an employee is required to self-isolate.
8. Accordingly, the Applicant submits that the reasons for inserting Schedule X remain current and favour the retention of that Schedule for a further limited period.
9. Such further or other grounds that the Commission considers appropriate.

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	Tim Kennedy
Name	Tim Kennedy
Date	29 June 2020
Capacity/Position	National Secretary- United Workers’ Union



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*

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

## Variation of Awards

(AM2020/32)

Restaurant Industry Award 2020

[MA000119]

PRESIDENT ROSS

MELBOURNE , 30 JUNE 2020

*Schedule X—Additional measures during the COVID-19 pandemic.*

A. Further to the decision [2020 FWCFB XXXX] issued by the Full Bench of the Fair Work Commission on XX XXX 2020, the above award is varied as follows:

1. By deleting clause X.1 in Schedule X and replacing it with the following:

**X.1** Subject to clauses X.2.1(d) and X.2.2(c), Schedule X operates from 8 April 2020 until further or other order of the Commission. The period of operation can be extended on application.

2. By deleting sub clause (d) of clause X.2.1 in Schedule X and replacing it with the following:

(d) A period of leave under clause X.2.1(a) must start before 30 September 2020, but may end after that date.

3. By deleting sub clause (c) of clause X.2.2 and replacing it with the following:

(c) A period of leave under clause x.2.2(a) must start before 30 September 2020, but may end after that date.

B. This determination comes into operation on XX XXXX 2020. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after XX XXXX 2020.

The President