



## 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 checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Paul		
Surname	Richardson		
Postal address	P.O Box 343		
Suburb	North Melbourne		
State or territory	Victoria	Postcode	3051
Phone number	03 9287 1850	Fax number	03 9287 1818
Email address	paul.richardson@unitedworkers.org.au		

**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	Not applicable
ABN/ACN	52 728 088 684
Contact person	Paul Richardson

### 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			
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

Oil Refining and Manufacturing Award 2020 [MA000072]

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

Oil refining and manufacturing

**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 determination varying the above modern award as follows:

1. By deleting the words appearing within clause 21.4 “...to the following superannuation funds:” and inserting in lieu “...to the following superannuation funds or its successor:”
2. Any consequential variations that may be necessary.

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 or about 5 July 2021, Australian Super and LUCRF Super announced that they had entered a due diligence process as a preparatory step towards both superannuation funds merging.
2. Should the merger occur LUCRF Super will cease to operate, and Australian Super will be the successor fund.
3. The provisions of the modern award do not contemplate a successor arrangement.
4. Most modern awards that specify one or more superannuation funds make provision for and contemplate successor arrangements. The application would ensure that the terms of the modern award are consistent with other modern awards that identify one or more superannuation funds.
5. The absence of a successor arrangement will lead to uncertainty on the part of employers who presently contribute to LUCRF Super should the merger occur. The variation would remove any uncertainty.
6. Should the merger not proceed the application remains appropriate given:
  - 6.1 the significant merger activity currently underway amongst superannuation funds; and
  - 6.2 the desire for consistency with other modern awards.
7. The application is consistent with the provisions of the *Fair Work Act 2009* and section 160 in particular.
8. The Applicant notes that of its own motion the Commission has formed a provisional view as to an alteration to the *Hospitality Industry (General) Award 2020* [MA000009] – **2021 FWC 6078** which also relates to merger activity amongst superannuation funds. This application may be distinguished from the statement referred to, insofar as the amalgamation referred to above is yet to occur (and may not occur) whereas the facts before Commissioner O’Neil are that an amalgamation of two superannuation funds has been agreed and subject to regulatory approval will occur. Further as referred to at paragraph 7 above, the application, whilst motivated by the possible merger of Australian Super and LUCRF Super, is general in its intention.
9. Any other grounds that may be advanced during the hearing of this application.

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	Paul Richardson
Date	25 October 2021
Capacity/Position	Director – Finance, Governance and Administration



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**