

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)	Daniel		
Surname De Salvo	De Salvo		
Postal address	40 – 42 Allied Drive		
Suburb	Tullamarine		
State or territory	Victoria	Postcode	3043
Phone number	03 9325 6900	Fax number	03 9325 6969
Email address	danield@beston.net.au		

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

Legal name of business	Beston Group (Vic) Pty Ltd
Trading name of business	Beston Plumbing
ABN/ACN	89 143 643 556 / 143 643 556
Contact person	Daniel De Salvo

Does the Applicant need an interpreter? No



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	Paul Scagliotti		
Organisation	JHK Legal		
Postal address	PO Box 16205		
Suburb	Collins Street West		
State or territory	Victoria	Postcode	8007
Phone number	03 9927 3600	Fax number	03 9620 1300
Email address	paul.scagliotti@jhklegal.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

Plumbing and Fire Sprinklers Award 2010 [MA000036]

1.2 What industry is the employer in?

Plumbing Services

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?

We request the Fair Work Commission consider and make a variation pursuant to section 157(1) of the *Fair Work Act (C'th) 2009 (the FW Act)*.

The grounds upon which this application is made is pursuant to section 158(1) of the FW Act as the Applicant, (Beston Group (Vic) Pty Ltd) is an employer entitled to make such an application under a modern award, being the Plumbing and Fire Sprinklers Award 2010 [MA000036] (**the Award**).

The Applicant formally requests an amendment to clause 18.2 of the Award to include the words "or voluntary resignation" e.g.

For the purposes of the clause, redundancy means a situation where an employee ceases to be employed by an employer other than for reasons of misconduct or refusal of duty **or voluntary resignation**. Redundant has a corresponding meaning.

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.

An urgent consideration and variation is necessary to achieve both of the objectives of the Award and the FW Act due to:

1. Consistency with the provisions of section 119 of the FW Act for circumstances whereby an employee is entitled to be paid redundancy if the employee's employment is terminated:
 - (a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
 - (b) because of the insolvency or bankruptcy of the employer.
2. Under the Award as it presently stands, an employee is considered redundant if:
 - (a) their employment ends, other than for reasons of serious misconduct or refusal of duty; or
 - (b) they are dismissed because of the insolvency or bankruptcy of the employer.

3. This means an employer has to pay redundancy when an employee is dismissed or they resign, which is inconsistent with s119 of the FW Act.
4. The detrimental impact on businesses covered by the Award from having employees voluntarily resign and still being entitled to redundancy payments when employees not covered by the Award and solely covered by the FW Act are not entitled to redundancy payments.
5. Ensure overall consistency between the Award and the FW Act.

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

Daniel De Salvo

Date

02 / 02 / 2017

Capacity/Position

Operations Manager



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