

## Form F48 – Application for directions on procedure

*Fair Work Commission Rules 2013, Rule 7*

This is an application to the Fair Work Commission for directions about procedure in relation to a matter in accordance with the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who is making this application. The applicant for directions on procedure may be different from the applicant in the matter before the Commission.

<b>Title</b>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input checked="" type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>	Rachel		
<b>Surname</b>	Liebhaber		
<b>Postal address</b>	Suite 46, 255 Drummond St		
<b>Suburb</b>	Carlton		
<b>State or territory</b>	VIC	<b>Postcode</b>	3053
<b>Phone number</b>	0429 217 234	<b>Fax number</b>	
<b>Email address</b>	rachell@hsu.net.au		

### If the Applicant is a company or organisation

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

<b>Legal name of Applicant</b>	Health Services Union
<b>Applicant's trading name or registered business name</b>	As above
<b>Applicant's ACN (if a company)</b>	N/A
<b>Applicant's ABN (if applicable)</b>	68 243 768 561
<b>Contact person</b>	Rachel Liebhaber <a href="mailto:rachell@hsu.net.au">rachell@hsu.net.au</a> , 0429 217 234  Trevor Clarke, Director, Industrial and Legal (ACTU), <a href="mailto:tclarke@actu.org.au">tclarke@actu.org.au</a> , (03) 9664 7333.

**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 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).

<b>Name of person</b>			
<b>Firm, organisation 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>			

**Is the Applicant’s representative a lawyer or paid agent?**

Yes

No

**The other party**



These are the details of the other party in the matter.

**Title**

Mr  Mrs  Ms  Other please specify:

**First name(s)**

**Surname**

**Postal address**

**Suburb**

**State or territory**

**Postcode**

**Phone number**

**Fax number**

**Email address**

**If the other party is an organisation**

If the other party is an organisation please also provide the following details

<b>Legal name of organisation</b>	
<b>Trading name of organisation</b>	Australian Business Lawyers and Advisors
<b>ABN/ACN</b>	
<b>Contact person</b>	Julian Arndt

<b>Legal name of organisation</b>	
<b>Trading name of organisation</b>	Australian Federation of Employers and Industries
<b>ABN/ACN</b>	
<b>Contact person</b>	Paula Thomson

<b>Legal name of organisation</b>	
<b>Trading name of organisation</b>	Australian Industry Group
<b>ABN/ACN</b>	
<b>Contact person</b>	Brent Ferguson and Ruchi Bhatt

## **1. Preliminary**

### **1.1 Are you seeking directions for an existing matter?**

Yes – Go to 1.2

No – Go to 1.3

## 1.2 What is the name and matter number for the matter?

## 1.3 What is the type of matter that you want to initiate?

Briefly, provide the details of the type of matter.

An application to vary the Aged Care Award 2010.

## 2. Reasons for seeking directions

### 2.1 Why are you applying to the Commission for directions?

[X] The procedure is not prescribed by the FW Act, the Fair Work Commission Rules, the regulations or any other Act or regulations. Provide details below.

[ ] You are in doubt about the proper procedure to follow. Provide details below.

Rule 49 requires this application to be made connection with an application to vary a modern award.

### 3. Proposed directions.


Set out your proposed directions you are seeking, if any (optional).

1. That the attached application to vary a modern award be published on the Fair Work Commission's website at a location deemed appropriate to the Commission
2. That the applicant serve the attached application by e-mail on the persons and organisations identified as an "other party" in the application.
3. That, upon completion of the above steps, the attached application be deemed served.
4. That the application be allocated to the Full Bench hearing matter number AM2020/13

### 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>	
<b>Name</b>	Rachel Liebhaber
<b>Date</b>	26 June 2020
<b>Capacity/Position</b>	National Industrial Officer, Health Services Union



Where this form is not being completed and signed by the Respondent, 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**

## 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  Mr  Mrs  Ms  Other please specify:

First name(s) Rachel

Surname Liebhaber

Postal address Suite 46, 255 Drummond Street

Suburb Carlton

State or territory VIC Postcode 3053

Phone number 0429 217 234 Fax number

Email address rachell@hsu.net.au

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

Legal name of business	Health Services Union
Trading name of business	Health Services Union
ABN/ACN	68 243 768 561
Contact person	Rachel Liebhaber <a href="mailto:rachell@hsu.net.au">rachell@hsu.net.au</a> , 0429 217 234  Trevor Clarke, Director, Industrial and Legal (ACTU), tclarke@actu.org.au, (03) 9664 7333.

### Does the Applicant need an interpreter?



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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

Aged Care Award 2010 [ma000018]

### 1.2 What industry is the employer in?

The aged care industry

## 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.

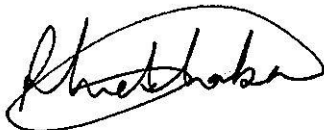
- (1) The variation proposed by the Applicants relates to the COVID-19 Pandemic.
- (2) The Applicants are seeking paid leave terms to replace the unpaid leave terms currently appearing in Schedule X, in proceedings AM2020/13.
- (3) The proceedings in AM2020/13 are listed for hearing on 25 and 26 June 2020.
- (4) There is no practical possibility of the proceedings in AM2020/13 reaching a conclusion before the existing Schedule X entitlements lapse on 30 June 2020.
- (5) The evidence lodged and to be led in matter AM2020/13 supports the need for the ongoing provision of pandemic leave (although the applicants maintain the better solution is paid leave).
- (6) 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.
- (7) The contemporary merit of the terms constituting the existing Schedule X entitlements in the Award is either not disputed or is conceded by the employer parties participating in AM2020/13.
- (8) The extension proposed is of a relatively short duration, to facilitate the preservation of existing entitlements pending final resolution of the proceedings in AM2020/13.
- (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	
Name	Rachel Liebhaber
Date	26 June 2020
Capacity/Position	National Industrial Officer, Health Services 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.

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PRXXXX

**FAIR WORK COMMISSION**

# **DRAFT DETERMINATION**

*Fair Work Act 2009*

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

**Health Sector Awards – Pandemic leave**

(AM2020/13)

AGED CARE AWARD 2010

MA000018

VICE PRESIDENT HATCHER

XX

XX

MELBOURNE, XX XXXX 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 in matter number AM2020/13. 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 31 July 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 31 July 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.

VICE PRESIDENT

