

## 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

#### Applicant 1

<b>Title</b>	[X] Mr [ ] Mrs [ ] Ms [ ] Other please specify:		
<b>First name(s)</b>	Robert		
<b>Surname</b>	Potter		
<b>Postal address</b>	116 Queensberry Street		
<b>Suburb</b>	Carlton South		
<b>State or territory</b>	Victoria	<b>Postcode</b>	2053
<b>Phone number</b>	(03) 9342 3400	<b>Fax number</b>	
<b>Email address</b>	info@asu.asn.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>	Australian Municipal, Administrative, Clerical and Services Union
<b>Applicant's trading name or registered business name</b>	Australian Services Union
<b>Applicant's ACN (if a company)</b>	
<b>Applicant's ABN (if applicable)</b>	
<b>Contact person</b>	Michael Robson, National Industrial Officer (ASU), <a href="mailto:mrobson@asu.asn.au">mrobson@asu.asn.au</a> , 0428 447 114.

#### Applicant 2

<b>Title</b>	[ x ] Mr [ ] Mrs [ ] Ms [ ] Other please specify:		
<b>First name(s)</b>	Lloyd		
<b>Surname</b>	Williams		
<b>Postal address</b>	Suite 46, 255 Drummond Street		
<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>	<a href="mailto:rachell@hsu.net.au">rachell@hsu.net.au</a>
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**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>	Health Services Union
<b>Applicant's ACN (if a company)</b>	
<b>Applicant's ABN (if applicable)</b>	
<b>Contact person</b>	Rachel Liebhaber, National Industrial Officer (HSU) <a href="mailto:rachell@hsu.net.au">rachell@hsu.net.au</a> , 0429 217 234

**Applicant 3**

<b>Title</b>	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>	Timothy		
<b>Surname</b>	Kennedy		
<b>Postal address</b>	833 Bourke Street		
<b>Suburb</b>	Docklands		
<b>State or territory</b>	Victoria	<b>Postcode</b>	3008
<b>Phone number</b>	0412 199 787	<b>Fax number</b>	03 9235 7770
<b>Email address</b>	<a href="mailto:stephen.bull@unitedworkers.org.au">stephen.bull@unitedworkers.org.au</a>		

**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>	United Workers 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>	52 72 8088 684
<b>Contact person</b>	Stephen Bull, Industrial Coordinator (UWU), 0412 199 787.

**Applicant 4**

<b>Title</b>	X Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>	David		
<b>Surname</b>	Moody		
<b>Postal address</b>	33 Thesiger Court		
<b>Suburb</b>	Deakin		
<b>State or territory</b>	ACT	<b>State or territory</b>	ACT
<b>Phone number</b>	0437 107 851	<b>Phone number</b>	0437 107 851
<b>Email address</b>	david.moody@nds.org.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>	National Disability Services
<b>Applicant's trading name or registered business name</b>	
<b>Applicant's ACN (if a company)</b>	
<b>Applicant's ABN (if applicable)</b>	52 008 445 485
<b>Contact person</b>	David Moody

**Does the Applicant need an interpreter?**

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?**

Yes – Applicant 4 has a Representative.

No

**Applicant's representative**

<b>Name of person</b>	Michael Pegg
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<b>Firm, organisation or company</b>	Michael Pegg Consulting		
<b>Postal address</b>	26 Rose St		
<b>Suburb</b>	Brunswick		
<b>State or territory</b>	VIC	<b>State or territory</b>	
<b>Phone number</b>	0439 399 952	<b>Phone number</b>	
<b>Email address</b>	Peggms24@gmail.com		

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

Yes

No

### The other party

<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 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>	
<b>ABN/ACN</b>	
<b>Contact person</b>	

## 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 Social, Community, Home Care and Disability Services Industry 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 Commission hear the matter urgently.
2. 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
3. That, upon completion of the above steps, the attached application be deemed served.
4. That, the Commission makes directions in the form of the Draft Direction annexed to this Application as Attachment A.

#### Signature – Applicant 1

<b>Signature</b>	
<b>Name</b>	Robert Potter
<b>Date</b>	28 April 2020
<b>Capacity/Position</b>	National Secretary, Australian Services Union

#### Signature – Applicant 2

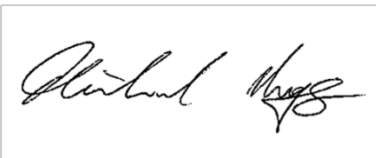
<b>Signature</b>	
<b>Name</b>	Lloyd Williams
<b>Date</b>	28 April 2020
<b>Capacity/Position</b>	National Secretary, Health Services Union

#### Signature – Applicant 3

<b>Signature</b>	Timothy Kennedy
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<b>Name</b>	Timothy Kennedy
<b>Date</b>	28 April 2020
<b>Capacity/Position</b>	National Secretary, United Workers Union

#### Signature – Applicant 4

<b>Signature</b>	
<b>Name</b>	Michael Pegg
<b>Date</b>	28 April 2020
<b>Capacity/Position</b>	Representative for National Disability Services

ATTACHMENT A

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FAIR WORK COMMISSION

# DRAFT DIRECTIONS

*Fair Work Act 2009*

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

**Social, Community, Home Care and Disability Services Industry Award 2010**

(AM2020/XX)

«MANAME»

«MACODE»

JUSTICE ROSS, PRESIDENT

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MELBOURNE, XX XXXX 2020

1. The Applicants file with the Commission any submission and evidence by 4:00PM on Wednesday, 29 April 2020.
2. Any persons opposing the Applications file with the Commission any submissions and evidence by 4.00PM, Friday 1 May 2020.
3. The matter be listed for hearing at 9.30AM on Monday, 4 May 2020.
4. There be liberty to apply.

PRESIDENT



## 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

#### Applicant 1

<b>Title</b>	[X] Mr [ ] Mrs [ ] Ms [ ] Other please specify:		
<b>First name(s)</b>	Robert		
<b>Surname</b>	Potter		
<b>Postal address</b>	116 Queensberry Street		
<b>Suburb</b>	Carlton South		
<b>State or territory</b>	Victoria	<b>Postcode</b>	
<b>Phone number</b>	(03) 9342 3400	<b>Fax number</b>	
<b>Email address</b>	<a href="mailto:info@asu.asn.au">info@asu.asn.au</a>		

#### 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>	Australian Municipal, Administrative, Clerical and Services Union
<b>Applicant's trading name or registered business name</b>	Australian Services Union
<b>Applicant's ACN (if a company)</b>	
<b>Applicant's ABN (if applicable)</b>	
<b>Contact person</b>	Michael Robson, National Industrial Officer (ASU), <a href="mailto:mrobson@asu.asn.au">mrobson@asu.asn.au</a> , 0428 447 114.

#### Applicant 2

<b>Title</b>	[ x ] Mr [ ] Mrs [ ] Ms [ ] Other please specify:
<b>First name(s)</b>	Lloyd
<b>Surname</b>	Williams

<b>Postal address</b>	Suite 46, 255 Drummond Street		
<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>	<a href="mailto:rachell@hsu.net.au">rachell@hsu.net.au</a>		

**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>	Health Services Union
<b>Applicant's ACN (if a company)</b>	
<b>Applicant's ABN (if applicable)</b>	68 243 768 561
<b>Contact person</b>	Rachel Liebhaber, National Industrial Officer (HSU) <a href="mailto:rachell@hsu.net.au">rachell@hsu.net.au</a> , 0429 217 234

**Applicant 3**

<b>Title</b>	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>	Timothy		
<b>Surname</b>	Kennedy		
<b>Postal address</b>	833 Bourke Street		
<b>Suburb</b>	Docklands		
<b>State or territory</b>	Victoria	<b>Postcode</b>	3008
<b>Phone number</b>	0412 199 787	<b>Fax number</b>	03 9235 7770
<b>Email address</b>	<a href="mailto:stephen.bull@unitedworkers.org.au">stephen.bull@unitedworkers.org.au</a>		

**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>	United Workers 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>	52 72 8088 684

applicable)	
Contact person	Stephen Bull, Industrial Coordinator (UWU), 0412 199 787.

#### Applicant 4

Title	X Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	David		
Surname	Moody		
Postal address	33 Thesiger Court		
Suburb	Deakin		
State or territory	ACT	Postcode	2600
Phone number	0437 107 851	Fax number	
Email address	david.moody@nds.org.au		

#### If the Applicant is a company or organisation

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

Legal name of Applicant	National Disability Services
Applicant's trading name or registered business name	
Applicant's ACN (if a company)	
Applicant's ABN (if applicable)	52 008 445 485
Contact person	David Moody

#### Does the Applicant need an interpreter?

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?

Yes – Applicant 4 has a representative

No

## Applicant 4's representative

<b>Name of person</b>	Michael Pegg		
<b>Firm, organisation or company</b>	Michael Pegg Consulting		
<b>Postal address</b>	26 Rose St		
<b>Suburb</b>	Brunswick		
<b>State or territory</b>	VIC	<b>Postcode</b>	
<b>Phone number</b>	0439 399 952	<b>Fax number</b>	
<b>Email address</b>	Peggms24@gmail.com		

### 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?

Social, Community, Home Care and Disability Services Industry Award 2010 [ma000100]

### 1.2 What industry is the employer in?

The crisis assistance and supported housing, social and community services, home care and family day care scheme sectors as defined in clause 3.1 of the award.

## 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.

- (1) The variation proposed by the Applicants relates to the COVID-19 Pandemic.
- (2) The variation proposed by the Applicants relates to social and community services employees undertaking disability services work (**'Disability Services Employees'**).
- (3) Disability services means the provision the one or more of following services to a person with a disability:
  - (a) personal care;
  - (b) domestic and lifestyle support;
  - (c) teaching, promoting or maintaining living skills;
  - (d) client advocacy;
  - (e) promoting or supporting community access and social inclusion; and/or
  - (f) developing or assisting in developing care or support plans including assessment of client needs.
- (4) The COVID-19 Pandemic has provoked a range of public health policy responses intended to minimise the spread of the Pandemic by reducing human interaction.
- (5) Those policy responses have culminated in advice from the Commonwealth Government to “..stay at home unless for:
  - (a) Shopping for what you need;
  - (b) Medical or health care needs, including compassionate requirements;
  - (c) Exercise in compliance with the public gathering requirements; and
  - (d) Work and study if you can't work or learn remotely”<sup>1</sup>(hereafter, 'exempt activities')

<sup>1</sup> <https://www.pm.gov.au/media/national-cabinet-statement>

- (6) Persons who have come into contact with a confirmed case of COVID-19, persons who have COVID-19 and persons who have arrived in Australia after midnight on 15 March 2020 must self-isolate for a period of 14 days.<sup>2</sup>
- (7) States and Territories have acted to make mandatory and enforce the advice from the Commonwealth Government referred to in paragraph (4) and (5) above.
- (8) The National Cabinet formed in response to the COVID-19 Pandemic has accepted advice from the Australian Health Protection Principal Committee that the following persons are, or are likely to be, at higher risk of serious illness if they are infected with the virus:
- (a) Aboriginal and Torres Strait Islander people 50 years and older with one or more chronic medical conditions;
  - (b) People 65 years and older with chronic medical conditions;
  - (c) People 70 years and older;
  - (d) People with compromised immune systems<sup>3</sup>
- (hereafter, 'vulnerable persons')
- (9) The Commonwealth Department of Health has advised that:
- "The risk of serious illness from coronavirus increases if you are older or if you have a chronic medical condition. The highest rate of fatalities is among older people, particularly those with other serious health conditions or a weakened immune system. There is currently no cure or vaccine for coronavirus, or immunity in the community, so you need to make sure you protect yourself".<sup>4</sup>
- The persons referred to in this paragraph are also, hereafter, included in the reference to 'vulnerable persons'.
- (10) The Commonwealth Department of Health has also advised that others should self-isolate in certain situations:
- "You must self-isolate if any of the following applies to you:
- you have COVID-19
  - you have been in close contact with a confirmed case of COVID-19
  - you arrived in Australia after midnight on 15 March 2020"<sup>5</sup>
- (11) The nature of the employment of Disability Services Employees covered by the modern award is such that they:
- (a) are engaged in exempt activities;
  - (b) required to come into contact with other persons engaged in exempt activities;
  - (c) are required to and/or likely to come into contact with vulnerable persons;
  - (d) are required to come into contact with persons who are required to self-isolate; and/or
  - (e) are required and/or likely to come into contact with persons who have COVID-19.

<sup>2</sup> <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/how-to-protect-yourself-and-others-from-coronavirus-covid-19/self-isolation-self-quarantine-for-coronavirus-covid-19>

<sup>3</sup> <https://www.pm.gov.au/media/statement-update-coronavirus-measures>

<sup>4</sup> <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/how-to-protect-yourself-and-others-from-coronavirus-covid-19/self-isolation-self-quarantine-for-coronavirus-covid-19>

<sup>5</sup> <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/how-to-protect-yourself-and-others-from-coronavirus-covid-19/self-isolation-self-quarantine-for-coronavirus-covid-19>


- (12) Employees who are required to work with clients in the circumstances set out by the draft determination are likely to be low paid workers eligible for Jobkeeper payments which reduce the economic incentive to undertake such work, and the proposed variation contributes to providing such an incentive and ensuring continuity of supply of relevant workers.
- (13) Employees who are required to work with clients in the circumstances set out by the draft determination are at an increased risk of subsequently being required to self-isolate and/or take leave and the variation is, in part, intended to compensate for the economic cost to such employees of foregoing their usual payment for work including shift penalty rates while isolated or on leave.
- (14) Some of the Disability Services Employees to whom the modern award applies are low paid relative to those who are not award dependent.
- (15) Some of the Disability Services Employees to whom the modern award applies are low paid as measured against the benchmark of two thirds of median weekly full time earnings.
- (16) The variation proposed will assist to increase the living standards of employees covered by the modern award.
- (17) The variation proposed will compensate Disability Services Employees for the disability associated with working with clients who may have contracted the virus, including the necessity of being subject to enhanced hygiene procedures and using personal protective equipment ('PPE').
- (18) The variation proposed will compensate Disability Services Employees for the increased responsibilities associated with working with clients who may have contracted the virus, including the responsibility performing enhanced hygiene procedures and using PPE.
- (19) The variation proposed will ensure that vulnerable persons needing to self-isolate will be able to access their normal disability supports.
- (20) The variation proposed may avoid short term costs to employers which could arise if Disability Services Employees refuse to work with clients who may have contracted the virus (including ceasing their employment) and are required to be replaced.
- (21) The variation proposed will neither encourage nor discourage collective bargaining, but will address a need for employers and employees who do not collectively bargain.
- (22) The variation proposed by the Applicant is intended to operate for a limited period of time, adopting an end date which is coextensive with the existing "Schedule X" introduced into the modern award by the decision of the Commission in [2020] FWCFB 1837.
- (23) The terms sought to be inserted in the modern award are about matters which are permitted to be included in a modern award pursuant to paragraph (h) of subsection 139(1) and section 142 of the FW Act.
- (24) For the foregoing reasons, the variation of the modern award in the terms sought by the Applicant is, fair, relevant and necessary.
- (25) Such further or other grounds that the Commission considers appropriate.

### Signature – Applicant 1

Signature	
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<b>Name</b>	Robert Potter
<b>Date</b>	28 April 2020
<b>Capacity/Position</b>	National Secretary, Australian Services Union


### Signature – Applicant 2

<b>Signature</b>	
<b>Name</b>	Lloyd Williams
<b>Date</b>	27 April 2020
<b>Capacity/Position</b>	National Secretary, Health Services Union

### Signature – Applicant 3

<b>Signature</b>	Timothy Kennedy
<b>Name</b>	Timothy Kennedy
<b>Date</b>	28 April 2020
<b>Capacity/Position</b>	National Secretary, United Workers Union

### Signature – Applicant 4

<b>Signature</b>	
<b>Name</b>	Michael Pegg
<b>Date</b>	28 April 2020
<b>Capacity/Position</b>	Representative for National Disability Services



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/XX)

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY  
AWARD 2010

MA000100

JUSTICE ROSS, PRESIDENT

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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 inserting new clause X.3 in Schedule X as follows:

**X.3 COVID-19 CARE ALLOWANCE**

(a) This clause applies to social and community services employees undertaking disability services work.

(b) Where an employer requires an employee to work with a client who:

- (i) is required by government or medical authorities to self-isolate in response to the COVID-19 Pandemic;
- (ii) is required on the advice of a medical practitioner to self-isolate in response to the COVID-19 Pandemic;
- (iii) the employer reasonably suspects has COVID-19; or
- (iv) has COVID-19;

the employee will be paid an hourly allowance of 0.5% percent of the Standard Rate.

**[Draft Determination]**

PRESIDENT