



About the F41 application form

Application to vary a transferable instrument

Who can use this form

Use this form if you would like to apply for an order to vary a transferable instrument that covers, or is likely to cover, an employee and new employer when there is a transfer of business within the meaning of the [Fair Work Act 2009](#), under section 320 of that Act.

An application may be made by:

- a person who is, or is likely to be, covered by the transferable instrument, or
- an employee organisation that is entitled to represent the industrial interests of an employee who is or is likely to be covered by a named employer award, and the application relates to such an instrument.

About applications to vary a transferable instrument

If there is a transfer of business within the meaning of the Fair Work Act (s.311), any enterprise agreement, workplace determination or named employer award (a modern award that expressly covers one or more employers) that previously covered an employee of the old employer, will transfer to cover that employee and become binding on the new employer.

Usually, an instrument that transfers under the Fair Work Act will displace any agreement or award that would otherwise apply to the transferring employee. There is no limit on the period for which any instrument that transfers will apply. In addition, new employees (non-transferring employees) who are engaged by the new employer to perform the same type of work as transferring employees may be covered by any transferring instrument if there is no other agreement or award that would otherwise cover them.

On application, the Fair Work Commission (Commission) may make orders to vary a transferable instrument that covers, or is likely to cover, the new employer to:

- remove terms that the Commission is satisfied will not be capable of meaningful operation due to the transfer of business to the new employer
- remove an ambiguity or uncertainty about how a term of the instrument operates if it has arisen or will arise due to the transfer of business and the variation will remove the ambiguity or uncertainty
- enable the transferable instrument to operate in a way that is better aligned with the working arrangements of the new employer's enterprise.

In determining whether to make the variation to the transferable instrument, the Commission must take into account:

- the views of the new employer or likely new employer and employees who would be affected by the varied instrument
- whether any employees would be disadvantaged by the varied instrument in relation to their terms and conditions of employment
- if the transferable instrument is an enterprise agreement, the nominal expiry date of the agreement
- whether, without the variation, the transferable instrument would negatively impact on the new employer's workplace productivity
- if the new employer would be significantly economically disadvantaged without the variation to the transferable instrument
- the degree of business synergy between the transferable instrument (without the proposed variation) and any relevant workplace instrument that already covers the new employer, and
- the public interest.

A variation can only commence operating at the later of either: the time when the instrument covers the new employer, or the day on which the variation is made (s.320(5)).

Lodging and serving your completed form

1. Lodge with the Commission:

- this **application** and any supporting documents, and
- a copy of the **transferable instrument** the application is about.

You can lodge:

- by email to lodge@fwc.gov.au, or
- by post or in person at the [Commission's office](#) in your state or territory.

2. As soon as practicable after lodging, serve a copy of all documents you lodged with the Commission on:

- the other parties to the transferable instrument, and
- if the transferable instrument is a named employer award – any employee organisation (union) that is entitled to represent the industrial interests of the employee covered by that instrument.

You can serve documents several ways, including by email, express post or registered post.

An easy way to serve the documents is to copy the people and organisations you are serving into the email you send to the Commission when you lodge the application.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

Legal or other representation

Representation is where another person speaks or acts on your behalf, or assists you in certain other ways in relation to a matter before the Commission. A representative could be a lawyer, paid agent, officer or employee of a union or a peak council, or a not-for-profit association or body that provides support, advice or advocacy in relation to employment or workplace relations matters.

You do not need to be represented in a case at the Commission.

There are some rules about being represented by a lawyer or paid agent.

Unless the Commission decides otherwise in a particular case, a lawyer or paid agent can represent you without permission to:

- prepare and lodge this application
- prepare and lodge submissions with the Commission, or
- write to the Commission and other people involved in the case on your behalf.

Generally, you must give notice to the Commission and seek permission from the Commission Member dealing with your case if you wish to have a **lawyer or paid agent** represent you in a **conference** or a **hearing**. You do not, however, need to give notice or ask permission if the lawyer or paid agent is:

- an employee or officer (for a business), or
- a bargaining representative that is representing you, or
- an employee or officer of a union or employer organisation, or an association of employers, or a peak council, that is representing you.

You can notify the Commission that you have a lawyer or paid agent using this form – provide their details at 'Do you have a representative?'.

If you need to notify the Commission that you have a lawyer or paid agent after you have lodged this form, or if you need to ask permission for a lawyer or paid agent to take part in a **conference or hearing**, use [Form F53](#).

Rule 13(2) of the [Fair Work Commission Rules 2024](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12, 13 and 14 of the [Fair Work Commission Rules 2024](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Paid agent – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or business responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, express or registered post, or in person. Part 5 of Chapter 1 and Schedule 1 of the [Fair Work Commission Rules 2024](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information.

Form F41 – Application to vary a transferable instrument

[Fair Work Act 2009](#), section 320, [Fair Work Commission Rules 2024](#), rule 63 and Schedule 1

This is an application to vary a transferable instrument under s.320 of the *Fair Work Act 2009*, when there is a transfer of business.

The Applicant



These are the details of the person who is lodging the application with the Commission.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

If the Applicant is an organisation please also provide the following details

Legal name of organisation	
Trading name of organisation	
ABN/ACN	
Contact person	

Do you need an interpreter?



If you have 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

Do you require any special assistance at the hearing or conference (eg a hearing loop)?

Yes – Please specify the assistance required

No

Do you have a representative?



A representative is a person or organisation who is representing you. This might be a lawyer or paid agent, a union, or a not-for-profit association or body that provides support, advice or advocacy in relation to employment or workplace relations matters. You do not need to have a representative.

Yes – Provide representative’s details below

No

Your representative



These are the details of the person or organisation that is representing the Applicant (if any).

Name of person			
Firm, union or company			
Representative’s ABN (if applicable)			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

Is your representative a lawyer or paid agent?

<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent
<input type="checkbox"/> No	

1. Preliminary

1.1 What is the name of the transferable instrument to which this application relates?



You must also attach a copy of the transferable instrument (*Fair Work Commission Rules 2024*, sub-rule 63 (2)).

1.2 What is the industry of the employer?

1.3 What is the nominal expiry date of the instrument?

2. Orders

2.1 Please specify the terms of the variation that you are seeking.

2.2 Please set out the grounds on which you rely in making the application to vary the instrument.



Using numbered paragraphs, set out the grounds on which you rely. The criteria for consideration of the Commission in determining whether to make the variation sought are set out in s.320 (4) of the Fair Work Act. You may wish to address any such criteria below.

Attach additional pages if necessary.

Authority to sign and signature



For 'Authority to sign':

- If you are the Applicant –insert 'Applicant'
- If you are an employee of a company or organisation that is the Applicant –insert your position title
- If you are an officer or authorised employee of an employee organisation that is the Applicant –insert your position title
- If you are the Applicant's representative and have provided your details in this form – insert 'Representative'.

Authority to sign	
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	
Name	
Date	

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS