



About the F23HB declaration

Declaration of employee organisation in relation to approval of a variation of a multi-enterprise agreement to remove an employer and employees

About a variation of a multi-enterprise agreement to remove an employer and employees

Section 216E of the [Fair Work Act 2009](#) provides for an employer and its 'affected employees' to make a variation of a multi-enterprise agreement that will have the effect that the employer and affected employees will cease to be covered by the agreement.

The variation has no effect unless it is approved by the Fair Work Commission (Commission).

The 'affected employees' are the employees who will cease to be covered by the agreement if the variation is approved by the Commission.

Only non-greenfields multi-enterprise agreements made on or after 6 June 2023 can be varied in this way.

When to use this form

Use this form if:

- you are an officer or authorised employee of an employee organisation that has been served with a *Form F23HA – Employer's declaration in support of approval of a variation of a multi-enterprise agreement to remove an employer and employees*, and
- the employee organisation is covered by the agreement and is entitled to represent the industrial interests of one or more affected employees.

Lodging and serving your completed form

1. You must **lodge** this declaration with the Commission **within 7 days** after the employee organisation is served with the *Form F23HA - Employer's declaration in support of approval of a variation of a multi-enterprise agreement to remove an employer and employees*.

You can lodge this declaration by post, fax or email, or in person at the [Commission office](#) in your state or territory.

Note: Form F23HB declarations must be lodged for each employee organisation that is covered by the agreement and is entitled to represent the industrial interests of one or more affected employees.

2. **As soon as practicable** after this declaration is lodged with the Commission, you must **serve a copy** of this declaration on the employer that will be removed from the agreement if the variation is approved and each other employee organisation that is covered by the agreement.

Where to get help

Commission staff & resource

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

- Commission processes
- 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 complete the form.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of an employer organisation) speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person's lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person's behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person
- a bargaining representative that is representing the person, or
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) 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 and 12A of the [Fair Work Commission Rules 2013](#) 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 the 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 an Applicant, a Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or organisation 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, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with the application for approval of variation to the agreement. The information will be included on the case file, and the Commission 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 F23HB – Declaration of employee organisation in relation to approval of a variation of a multi-enterprise agreement to remove an employer and employees

Fair Work Act 2009, section 216EA

This is a declaration in relation to an application to the Fair Work Commission under section 216EA of the Fair Work Act 2009 for approval of a variation of a multi-enterprise agreement made under section 216E of the Act.

I,	
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[insert name of person making the declaration]

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[insert postal address of person making the declaration]

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[insert suburb]

[insert State or Territory]

[insert postcode]

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[insert occupation of person making the declaration]

declare that:

- 1. I am an officer or authorised employee of the following employee organisation (the Union):**

Name of Union	
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- 2. This declaration relates to an application for approval of a variation (the variation) of the following enterprise agreement having the effect that the following employer and its affected employees will cease to be covered by the Agreement:**



Write the name exactly as it appears in the title clause of the Agreement and include the Agreement ID/Code Number if known.

Name of Agreement	
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Name of Employer	
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3. Is the Union covered by the Agreement?

- Yes
- No

4. Is the Union entitled to represent the industrial interests of one or more Affected employees?



The *Affected Employees* are the employees who will cease to be covered by the Agreement if the variation is approved by the Fair Work Commission.

- Yes
- No

If you answered **Yes** – Describe the Affected Employees the Union is entitled to represent below.

5. Does the Union agree to the variation?

- Yes
- No

6. Does the Union have any grounds to believe that a majority of Affected Employees who cast a valid vote did not approve the variation?

- Yes
- No

If you answered Yes – Describe the grounds below.

Attach additional pages if necessary.

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7. Does the Union want to advise the Commission that it disagrees with one or more statements in the Employer’s declaration relating to the variation?


- Yes
- No

If you answered **Yes** – Provide details of the Employer’s declaration:

Name of person who made the Employer’s declaration	
Date of Employer’s declaration	

8. If you answered Yes to question 7 – Set out the statements that the Union disagrees with and state why the Union disagrees with them, using numbered paragraphs:

Attach additional pages if necessary.

Signature		Date:	
	<p>Giving false or misleading information is a serious offence.</p> <p>A person who knowingly gives false or misleading information or knowingly produces a false or misleading document in support of an application for variation of an enterprise agreement is guilty of an offence, the punishment for which is imprisonment for up to 12 months - see s.137.1 and s.137.2 of the <i>Criminal Code</i>.</p>		
<p>PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS</p>			