



About the F23IA declaration

Employer's declaration in support of an employer's application for approval of a variation of a cooperative workplace agreement to add an employer and employees

About a variation of a cooperative workplace agreement to add an employer and employees

Section 216C of the [Fair Work Act 2009](#) provides for an employer and its 'affected employees' to jointly make a variation of a cooperative workplace agreement, that will have the effect that the employer and affected employees will become covered by the agreement. The 'affected employees' are employees employed by the employer at the time the variation is made, who will be covered by the agreement if the variation is approved by the Fair Work Commission (Commission).

The variation has no effect unless it is approved by the Commission.

When to use this form

Use this form if you are the employer that has lodged a *Form F23I – Application by an employer for approval of a variation of a cooperative workplace agreement to add an employer and employees*, or are completing this form for the employer.

Lodging and serving your completed form

1. **Within 14 calendar days** after the variation is made, you must **lodge** with the Commission:
 - the *Form F23I – Application by an employer for approval of a variation of a cooperative workplace agreement to add an employer and employees*, and
 - this declaration.

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

2. **As soon as practicable** after lodging this declaration with the Commission, you must **serve a copy** of this declaration on each employee organisation covered by the agreement.

Where to get help

Commission staff & resources

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 F23IA – Employer’s declaration in support of an employer’s application for approval of a variation of a cooperative workplace agreement to add an employer and employees

[Fair Work Act 2009](#) section 216CA

This is a declaration in support of an application to the Fair Work Commission under section 216CA of the [Fair Work Act 2009](#) for approval of a variation of a cooperative workplace agreement made under section 216C 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 Preliminary

1.1 What is the name of the employer that has made the application under section 216CA of the Fair Work Act 2009 (the Employer)?

Legal name of Employer	
Employer’s ACN (if a company)	
Employer’s trading name or registered	

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business name (if applicable)	
Employer’s ABN	

1.2 What is the name of the cooperative workplace agreement that is proposed to be varied (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.

2. Making the variation

Providing affected employees with a reasonable opportunity to consider the Agreement as proposed to be varied



See sections 216CB(1)(c), 216CC and 188(1) of the [Fair Work Act 2009](#), and paragraph 4 of the Statement of Principles on Genuine Agreement.

The Commission must take into account paragraph 4 of the Statement of Principles on Genuine Agreement.

2.1 Did the Employer provide affected employees with copies of the Agreement as proposed to be varied and incorporated materials in accordance with paragraph 5 of the Statement of Principles on Genuine Agreement?



See paragraph 5 of the Statement of Principles on Genuine Agreement.

Yes – Go to question 2.2

No – Explain below how the Employer provided affected employees with a reasonable opportunity to consider the variation before voting on it, so that the employees could vote in an informed manner. Then go to question 2.3.

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2.2 Describe the steps the Employer took so that, a reasonable time period before the start of the voting on the variation, the Employer provided to affected employees:

- a. a full copy of the Agreement as proposed to be varied, and**
- b. a full copy of any other material incorporated by reference in the Agreement as proposed to be varied.**



See paragraphs 5 to 7 of the Statement of Principles on Genuine Agreement. Paragraph 6 of the Statement of Principles on Genuine Agreement says what a 'reasonable time period' includes, and paragraph 7 says how the copies may be provided to employees.

Describe each step taken and state the date on which it was taken:

Date(s)	Steps taken to provide to affected employees a full copy of the Agreement as proposed to be varied and of any other material incorporated by reference in the Agreement as proposed to be varied.

List the other material incorporated by reference in the Agreement as proposed to be varied (if any):

Explaining the terms of the Agreement as proposed to be varied

2.3 What steps were taken by the Employer to explain the terms of the Agreement as proposed to be varied and the effect of those terms to the affected employees, and what was explained?

See section 216CAA of the [Fair Work Act 2009](#). Before requesting that affected employees vote, the employer must take all reasonable steps to ensure the terms of the agreement as proposed to be varied, and the effect of those terms, are explained to the affected employees.

Also see sections 216CB(1)(c), 216CC and 188(1) of the [Fair Work Act 2009](#). The Commission must also take into account paragraphs 8 to 14 of the Statement of Principles on Genuine Agreement.



Describe the steps taken to explain to the employees the terms of the Agreement as proposed to be varied and the effect of those terms. For example, describe how the information was given in meetings, by email or post, and by other means. Write down the date on which each step was taken.

Also lodge copies of any materials that were used to explain the Agreement as proposed to be varied to the employees.

Include details of what was explained to the employees. Do not simply state that the terms of the variation were explained to employees.

Date(s)	Steps taken	Explanation given

2.4 When the Employer explained the terms of the Agreement as proposed to be varied, and the effect of those terms, to the affected employees, what was done to take into account the particular circumstances and needs of the affected employees?

See section 216CAA(1)(b) of the [Fair Work Act 2009](#). The employer must take all reasonable steps to ensure that the explanation is provided in an appropriate manner.

Section 216CAA(2) provides as examples of the kinds of employees whose circumstances and needs are to be taken into account, employees from culturally and linguistically diverse backgrounds, young employees and employees who didn’t have a representative for the variation.



The Commission must also take into account paragraph 14 of the Statement of Principles on Genuine Agreement.

Identify the relevant group of employees addressed and their particular circumstances (for example employees from a non-English speaking background or young employees). Describe the steps the employer took to accommodate their circumstances. Write down the date on which each step was taken.

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Also lodge copies of any materials that were used to ensure the explanation to employees was provided in an appropriate manner (if not lodged in response to question 2.3).

Do not simply state that the employer took reasonable steps to ensure the explanation was provided in an appropriate manner.

Date of step	Step taken	Relevant group of employees addressed

Providing affected employees with a reasonable opportunity to vote on the variation in a free and informed manner



See sections 216CB(1)(c), 216CC and 188(1) of the [Fair Work Act 2009](#), and paragraphs 15 and 16 of the Statement of Principles on Genuine Agreement.

2.5 Describe the steps that were taken to inform affected employees of:

- a. the time and place for the vote, and**
- b. the voting method.**

See paragraph 16 of the Statement of Principles on Genuine Agreement.



Describe how employees were informed about the time and place for the vote and the voting method. For example, describe information given during meetings, by email or post, and on noticeboards. Include the date each of these steps was taken.

Also lodge copies of any materials that were provided to employees to notify them about the vote.

Do not simply state that the relevant employees were notified by the specified time.

Date(s)	Steps taken and information given to employees about time and place for vote and voting method

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2.6 Describe the voting process for the variation.



See paragraph 15 of the Statement of Principles on Genuine Agreement

Describe the voting process used and the method and period of the vote, and explain how all employees entitled to vote were provided with a fair and reasonable opportunity to cast a vote.

2.7 Describe any further steps taken to give employees a reasonable opportunity to vote on the variation in a free and informed manner.

Sufficient interest and sufficiently representative

2.8 Explain how the affected employees:

- a. have a sufficient interest in the terms of the Agreement as proposed to be varied, and
- b. are sufficiently representative, having regard to the employees the Agreement as proposed to be varied is expressed to cover.



See sections 216CB(1)(c), 216CC and 188(2) of the [Fair Work Act 2009](#). Also see paragraph 17 of the Statement of Principles on Genuine Agreement.

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Voting on the variation

2.9 Provide the following dates:



See section 216C of the [Fair Work Act 2009](#).

Event	Date
The date voting for the variation of the agreement commenced (that is, the first date that an employee was able to cast a vote).	
The date the variation was made.	

2.10 Provide the following details about the vote on the variation:

At the time of the vote, how many affected employees of the Employer were there?	
How many of these employees cast a valid vote?	
How many of these employees voted to approve the variation?	

3. Further requirements for approval

3.1 Is the Agreement a greenfields agreement that covers employees in relation to general building and construction work?



See section 216CB(2)(a) of the Fair Work Act 2009. *General building and construction work* is defined in section 23B of the Act.

- Yes
- No

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3.2 As a result of the variation, would the Agreement cover employees in relation to general building and construction work?



See section 216CB(2)(b) of the Fair Work Act 2009.

- Yes
- No

3.3 Is the Employer specified in a supported bargaining authorisation, or a single interest employer authorisation, in relation to any of the affected employees?



See section 216CB(3) of the Fair Work Act 2009. *Affected employees* is defined in section 216D(1) of the Act.

- Yes
- No

3.4 Would it be contrary to the public interest for the Employer and affected employees to be covered by the Agreement?




The Commission must be satisfied that it is not contrary to the public interest for the employer and the affected employees to be covered by the agreement. See section 216CB(1)(d) of the Fair Work Act 2009.

- Yes
- No

If you answered **No**—Explain why it would not be contrary to the public interest for the Employer and affected employees to be covered by the Agreement:

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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>			