



DECISION

Fair Work Act 2009

s.216AA - Application by an employer for approval of a variation of a supported bargaining agreement to add employer and employees

The Trustee for AOE HS Trust T/A Alpha Omega Early Education
(B2025/1714)

Early Childhood Education and Care Multi-Employer Agreement 2024-2026

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 21 NOVEMBER 2025

Application for variation of the Early Childhood Education and Care Multi-Employer Agreement 2024-2026

[1] This matter concerns an application for the approval of a variation to the *Early Childhood Education and Care Multi-Employer Agreement 2024-2026 (ECEC Agreement)* to add the employer (**applicant employer**), and its relevant employees, to its coverage.

[2] The application has been made under s.216AA of the *Fair Work Act 2009 (FW Act)*.

[3] The applicant employer is engaged in the early childhood education and care (ECEC) sector. A similar batch of s.216AA applications concerning the ECEC Agreement was determined by the Commission as presently constituted in January 2025 with the decision¹ (*January 2025 variations decision*) approving some 33 variations. Further, a secondary decision² (*March 2025 variations decision*) was published on 18 March 2025 approving 136 variations. A series of other decisions have now followed.

[4] I have now considered and determined this application on its own merits having regard to the relevant supporting evidence and materials.

[5] The applicant employer has brought the application on the basis that a variation has been agreed with its relevant employees to include it in the coverage of the ECEC Agreement. The application is supported by the United Workers' Union (UWU) and the Independent Education Union of Australia (IEU), and no concerns with the application have been raised by the Australian Education Union.³

[6] Under the FW Act, the variation has no effect unless approved by the Commission,⁴ and this application seeks that approval. I have dealt with this matter without holding a hearing.

[7] The scheme of the FW Act, and its provisions relevant to this matter, were all comprehensively set out and discussed in the *January 2025 variations decision* and the *March 2025 variations decision*. I need not repeat that here; however, what follows should be read in

conjunction with these earlier decisions. See also the *National Practice Leader's Statement* concerning applications of this kind I issued on 30 April 2025.⁵

[8] Having considered the application, I have determined to approve the variation that is now set out in this decision. That approval and my reasons for doing so, including briefly confirming my satisfaction with the various relevant statutory requirements and considerations, are set out below.

The making of the variation – s.216A, s.216AAA and s.216AB(1)(b)

[9] The applicant employer in this matter has agreed to a joint variation with its affected employees. The employees have approved the variation by a unanimous vote, via a formal ballot of employees. The ballot was conducted by an independent ballot agent.

[10] The FW Act also requires that before an employer requests the employees to approve the proposed variation, it must take all reasonable steps to ensure that the terms of the agreement as proposed to be varied, and the effect of those terms, are explained to the affected employees and that the explanation is provided in an appropriate manner taking into account the circumstances and needs of the employees.⁶ The FW Act also provides some examples of the kinds of employees whose circumstances and needs are to be taken into account.⁷

[11] The material provided with the application supports a finding that these requirements have been met. The measures undertaken included the provision of comprehensive and accurate written explanations of the effect of the variation; and access to all relevant documents (including the ECEC Agreement, the relevant safety net modern awards and information about the Early Childhood Education and Care Worker Retention Payment (**EWRP**)).

[12] The variation has been made under the relevant terms of the FW Act.⁸

The making of the application – s.216AA

[13] The application was made within 14 days after the variation was made.

[14] Section 216AA(2)(b) requires that the application be accompanied by “a copy of the agreement as proposed to be varied.”. The applicant employer has ultimately provided a copy of the ECEC Agreement and the relevant variation, which is, in effect, an additional page confirming its addition to the coverage consistent with the schedule of employers within the Agreement – Part G. Accordingly, on any view, a copy of the agreement as proposed to be varied was provided with the application.

[15] The variation has been signed as required by the FW Act and *Fair Work Regulations 2009* (**Regulations**). An identified employee representative, who would be covered by the ECEC Agreement if the variation is approved, has signed the variation consistent with regulation 2.10B of the Regulations.

[16] The application is validly made. This meets the requirements of s.216AA of the FW Act.

The other approval requirements – s.216AB

Consistency with the supported bargaining authorisation requirements

[17] The Commission must approve the variation if it is satisfied (amongst other requirements and exceptions) that it would have been required to make a supported bargaining authorisation under s.243 and s.243A of the FW Act. These requirements are modified by s.216AC to remove any reference to an authorisation application being made and to remove certain other considerations from s.243(1)(b).⁹

[18] Without being definitive, this means in effect that the Commission must consider whether it is appropriate for the applicant employer and its affected employees to bargain together with (join) the existing covered employers and their relevant employees, by being added to the agreement made by them, having regard to:

- The prevailing pay and conditions within the relevant industry or sector (including whether low rates of pay prevail in the industry or sector) – s.243(1)(b)(i);
- Whether the employers have clearly identifiable common interests – s.243(1)(b)(ii); and
- Any other matter considered appropriate – s.243(1)(b)(iv).

[19] Further, the Commission must not approve a variation where an employer to be covered is already covered by a single-enterprise agreement that has not passed its nominal expiry date, unless it is satisfied that the employer's main intention in making the agreement was to avoid being specified in a supported bargaining authorisation – ss.243A(1) and (3).

[20] The evidence before the Commission is consistent with the notion that the circumstances of the applicant employer and its affected employees are harmonious with those found by the Full Bench in making the relevant authorisation. This includes the prevailing pay and conditions and the existence of relevant common interests. In that light, I will not in this decision set out detailed findings about these matters. Having considered all of the circumstances of the application, I was readily satisfied that s.216AB(1)(a) had been met.

[21] I also note that the applicant employer has confirmed to the Commission that it has already applied for, or will do so within a stated period, the EWRP grant funding from the Commonwealth Government.¹⁰

[22] There are no relevant single-enterprise agreements applying to the parties and this means that the restriction in s.243A(1) does not apply.

Has the variation been genuinely agreed to by the majority of affected employees in accordance with s.216AB(1)(b) and s.216AD of the FW Act?

[23] As cited earlier, the variation has been approved by a majority of valid votes cast by the affected employees. This meets the requirements of s.216AB(1)(b).

[24] Section 216AD provides, in effect, that the Commission must apply the terms of s.188 with the stated modifications in its assessment as to whether the variation has been genuinely agreed. In applying these requirements, I have adopted an approach that is consistent with that taken in the earlier decisions of the Commission.¹¹

[25] In this matter, I have found that the variation has been genuinely agreed. Accordingly, I am also satisfied that the requirements of s.216AB(1)(c) of the FW Act have been met.

General building and construction work

[26] Section 216AB(2) of the FW Act prevents a variation of this kind being approved if it were to cover employees in the general building and construction industry. The variation includes only employees of a kind who are already covered by the ECEC Agreement and its facilitating authorisation,¹² and the variation may be approved.

Any existing single interest authorisation

[27] Section 216AB(3) of the FW Act prevents a variation of this kind being approved if the employer concerned is already specified in a single interest employer authorisation.

[28] This does not apply to the applicant employer.

[29] These findings collectively meet the requirements of s.216AB of the FW Act.

Other considerations – s.216AE

[30] Section 216AE of the FW Act provides a (further) discretionary basis to refuse the approval of a variation of this kind. This applies where the Commission considers that compliance with the terms of the agreement may result in a person:

- committing an offence against a law of the Commonwealth; or
- being liable to pay a pecuniary penalty in relation to a contravention of such a law.

[31] The variation is to join an existing approved enterprise agreement following a process consistent with the terms of the FW Act. There is no basis for any finding as contemplated by s.216AE in this matter.

Conclusions and approval

[32] Given my satisfaction with all of the relevant requirements, and having assessed the related considerations, I was required to approve the variation.

[33] The variation is approved and attached to this decision as Annexure A.

[34] The Commission has a discretion under s.216AF of the FW Act to determine the date of effect of the variation. In the absence of contrary proposals, the variation in this matter will operate from today (21 November 2025).

[35] In conclusion, I observe that with this approved variation, the ECEC Agreement now covers some 517 employers and over 45,800 employees.



DEPUTY PRESIDENT

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ANNEXURE A

Variation

Proposed Variation of the *Early Childhood Education and Care Multi-Employer Agreement 2024-2026*

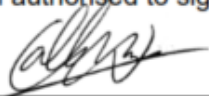
Pursuant to section 216A of the *Fair Work Act 2009* (Cth), the *Early Childhood Education and Care Multi-Employer Agreement 2024-2026* be varied by inserting into Part G of the Agreement the following:

Business name	Centre name and address	ABN/ACN
The Trustee for AOE HS Trust	Alpha Omega Early Education 18 Hansen Street Mount Waverley VIC 3149	44 663 147 584

Signatures

Employer Representative

I am authorised to sign this variation on behalf of the Employer listed in the variation



Signature

ALFRED WONG

Full Name

DIRECTOR

Title

6 BRUNTON CRESCENT, MULGRAVE VIC 3710

Address (including State and Postcode)

Employee Representative

I am an affected employee and am acting as the representative to sign the variation in accordance with Regulation 2.10B of the Fair Work Act Regulations 2009.

N. Thi
Signature

Tharshini Nirmalan
Full Name

Room leader
Title

No-15 Pebble stone spot Clyde north VIC 3978
Address (including State and Postcode)

¹ [\[2025\] FWCA 282](#), issued on 28 January 2025.

² [\[2025\] FWCA 523](#), issued on 18 March 2025.

³ These organisations are covered by the ECEC Agreement and are default bargaining representatives.

⁴ Section 216A(5) of the FW Act.

⁵ [\[2025\] FWC 1179](#).

⁶ Section 216AAA(1) of the FW Act.

⁷ Section 216AAA(2) of the FW Act.

⁸ Section 216A(4) of the FW Act.

⁹ See *March 2025 variations decision* at [35], [36].

¹⁰ See the *January 2025 variations decision* at [46] to [56].

¹¹ See *March 2025 variations decision* at [44] to [55].

¹² [\[2023\] FWC FB 176](#) at [60].