



About the F23AA declaration

Employer's declaration in support of an application under section 210 for approval of a variation of an enterprise agreement – employer requested before 6 June 2023 that employees approve the variation

When to use this form

Enterprise agreements are agreements made at the enterprise level that contain terms and conditions of employment.

Enterprise agreements can be varied:

- under section 207 of the [Fair Work Act 2009](#) (the Act) in general circumstances by the employer and employees
- under sections 216A and 216B, section 216C, and sections 216D and 216DB of the Act respectively to add an employer and employees to a supported bargaining agreement, cooperative workplace agreement or single interest employer agreement
- under section 216E of the Act to remove an employer and employees from a multi-enterprise agreement, or
- under sections 217, 218 or 218A of the Act respectively to remove an ambiguity or uncertainty, on referral by the Australian Human Rights Commission, or to correct or amend errors, defects or irregularities.

A variation made by an employer and employees (including a variation under section 207) has no effect unless it is approved by the Fair Work Commission (the Commission).

This form provides information to assist the Commission to determine whether to approve a variation of an enterprise agreement under section 207 of the Fair Work Act 2009. This form can be used if:

- you are an employer that is covered by the agreement (or an officer or authorised employee completing this form for an employer)
- a [Form F23 – Application under section 210 for approval of a variation of an enterprise agreement](#) has been or is being lodged with the Commission, and
- the employer(s) requested before 6 June 2023 that employees approve the variation by voting for it.

If the agreement is a single-enterprise agreement and the employer requested that employees approve the variation by voting for it **on or after 6 June 2023**, you will need to complete Form F23AB instead of this form.

If the agreement is a multi-enterprise agreement and the employer requested that employees approve the variation by voting for it **on or after 6 June 2023**, you will need to complete Form F23AC instead of this form.

What is covered in this form

Part 1 – Details of the employer, employees and the agreement

Part 2 – Requirements for approval

Part 3 – The better off overall test and National Employment Standards

Part 3.1 – The better off overall test

Part 3.2 – The National Employment Standards

Part 4 – Statistical information

What you may need when completing this form

When completing this form, you will be required to provide information about the variation of the agreement and the steps taken before the variation was made. To assist you to answer these questions, it would be useful to have available:

- a copy of any material provided to employees about the variation, such as explanatory material
- records of the dates and steps that were taken during the variation process, such as details provided to employees about when and how the vote was to occur
- a signed copy of the variation
- a copy of the agreement as proposed to be varied
- a copy of the relevant modern award(s) for comparison with the agreement as proposed to be varied.

How to lodge and serve your completed form

1. **Within 14 calendar days** after the variation is made, you must **lodge** with the Commission:
 - This declaration **and**
 - Copies of any materials provided to employees to notify them of the time and place at which the vote was to occur and the voting method to be used (see question 6) **and**
 - Copies of any materials used to explain to employees the terms of the variation and the effect of those terms (see question 7) **and**

- Copies of any materials used to ensure the explanation was provided in an appropriate manner taking into account the particular circumstances and needs of the relevant employees (see question 8)

You can lodge your form and any supporting material by post, fax or email, or in person at the [Commission office](#) in your state or territory.

Note: Form F23A and Form F23B declarations must be lodged respectively for **each employer** and **each employee organisation** that is covered by the agreement.

3. **As soon as practicable** after this declaration is lodged with the Commission, you must **serve a copy** of this declaration and any supporting material upon:

- each other employer that is covered by the agreement **and**
- each employee organisation that is 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.

You will find further useful information in the Information Sheet at the end of this form.

Form F23AA – Employer’s declaration in support of an application under section 210 for approval of a variation of an enterprise agreement – employer requested before 6 June 2023 that employees approve the variation

[Fair Work Act 2009](#), s.210; Fair Work Commission Rules 2013, rule 25 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission under section 210 of the Fair Work Act 2009 for approval of a variation of an enterprise agreement under Part 2-4 of the [Fair Work Act 2009](#), where the employer requested before 6 June 2023 that employees approve the variation.

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:

Part 1 – Details of the employer, employees and the agreement

1 What is the name of the employer?

Legal name of employer	
Employer’s ACN (if a company)	
Employer’s trading name or registered business name (if applicable)	
Employer’s ABN	

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2 What is the name of the agreement that is proposed to be varied?



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

3 What kind of agreement is the enterprise agreement?

- A single enterprise agreement
- A multi-enterprise agreement

4 Does the agreement as proposed to be varied cover all the employees of the employer?



See sections 211(1), 186(3) and 186(3A) of the [Fair Work Act 2009](#). The Commission must be satisfied that the group of employees covered by the agreement as proposed to be varied was fairly chosen.

- Yes
- No

If you answered **No** – What group of employees is covered by the agreement as proposed to be varied and what group of employees is not covered? Explain why you think the Commission should be satisfied that the group covered was fairly chosen. If relevant, describe how the group of employees covered is geographically, operationally or organisationally distinct.

Part 2 – Requirements for approval

5 What steps were taken by the employer to ensure that the affected employees:

- a. were given a copy of the written text of the variation and any other material incorporated by reference in the variation during the access period, or**
- b. had access to a copy of the above materials throughout the access period?**



See sections 211(3) and 180(2) of the [Fair Work Act 2009](#). The employer must take all reasonable steps to ensure affected employees are given or have access to the materials at the specified time. The ‘affected employees’ are defined in s.207(2) as the employees employed at the time who are covered by the agreement and the employees employed at the time who will be covered by the agreement if the variation is approved by the Commission.

When applied to variations, the ‘access period’ is the 7-day period immediately before the start of the voting process for the variation of the agreement.

If any other material is incorporated by reference in the agreement, you should identify it below.

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

Date(s)	Steps taken to give employees copies of, or access to, the written text of the variation and any other material incorporated

List the other material incorporated by reference in the agreement (if any).

6 What steps did the employer take to notify the affected employees by the start of the access period of:

- a. the time and place at which the vote was to occur, and**
- b. the voting method to be used?**



See sections 211(3) and 180(3) of the [Fair Work Act 2009](#). The employer must take all reasonable steps to notify affected employees by the specified time.

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

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

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

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

7 What steps were taken by the employer to explain the terms of the variation and the effect of those terms to the affected employees, and what explanation was given to the affected employees?



See sections 211(3) and 180(5)(a) of the [Fair Work Act 2009](#). The employer must take all reasonable steps to ensure the explanation is given to affected employees.

Describe the steps taken to explain to employees the terms of the variation 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 to employees.

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

Date(s)	Steps taken	Explanation given

8 When the employer explained the terms of the variation, 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 sections 211(3) and 180(5)(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.

Examples of employees whose circumstances and needs are to be taken into account include employees from non-English speaking backgrounds, young employees and employees who don’t have a bargaining representative.

Identify the relevant group of employees addressed and their particular circumstances (for example employees from a non-English speaking background or young employees).

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Describe the steps you took to accommodate their circumstances. Write down the date on which each step was taken.

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 7).

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

9 Provide the following dates:



See s.209 of the [Fair Work Act 2009](#).

Event	Date
The date voting on the variation of the agreement commenced (that is, the first date that an affected employee was able to cast a vote).	
The date that the variation was made (that is, the date on which the voting process by which the affected employees approved the variation concluded).	

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

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

Part 3 – The better off overall test and National Employment Standards

This section requires you to answer questions about how the enterprise agreement as proposed to be varied compares to the modern award(s) that cover the employer and employees covered by the agreement as proposed to be varied, and how the agreement as proposed to be varied interacts with the National Employment Standards in the Fair Work Act 2009.

This is important for the Commission to be able to determine whether or not your variation satisfies the legislative requirements for approval.

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Please attach any supporting material you wish to include in your application.

Part 3.1 – The better off overall test



See sections 211(3)(ha), 211(4) and 193 of the [Fair Work Act 2009](#).

The *better off overall test* requires the Commission to be satisfied, as at the time the application for approval of the variation was made, that each award covered employee, and each reasonably foreseeable employee would be better off overall under the agreement as proposed to be varied than under the relevant modern award.

11 List the modern award(s), if any, that currently cover the employer and any of the employees to whom the agreement as proposed to be varied will apply.



You should include the MA number for each award. You can find the MA number on the [modern awards list](#) page on the Commission’s website.

12 Are any of the employee classifications in the agreement altered by the variation?

Yes

No

If you answered **Yes** – For each modern award, use the following table to identify how the classifications in the agreement as proposed to be varied correspond to the classifications in the modern award.

Name of modern award:	
Classification in modern award	Corresponding classification in agreement as proposed to be varied

Attach additional tables if there is more than one modern award.

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Improvements and reductions



Your answers to questions 13-19 (inclusive) should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected. Include relevant clause numbers.

You may provide a consolidated response to questions 13-19 in a separate attachment.

13 Does the agreement as proposed to be varied contain any terms or conditions of employment that are more beneficial than under the agreement as it presently is?

Yes

No

If you answered **Yes** – Identify how the terms and conditions of the agreement as proposed to be varied are **more beneficial**. Include relevant clause numbers.

14 Does the agreement as proposed to be varied contain any terms or conditions of employment that are less beneficial than under the agreement as it presently is?

Yes

No

If you answered **Yes** – Identify how the terms and conditions of the agreement as proposed to be varied are **less beneficial**. Include relevant clause numbers.

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15 Does the agreement as proposed to be varied contain any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the modern award(s) listed in your answer to question 11?

- Yes
- No

If you answered **Yes** – List the terms and conditions of the agreement as proposed to be varied that are **more beneficial** than equivalent terms and conditions in the modern award(s).

16 Does the agreement as proposed to be varied provide any entitlements that the modern award(s) listed in your answer to question 11 do not provide?

- Yes
- No

If you answered **Yes** – List the entitlements provided by the agreement as proposed to be varied that are **not provided** by the modern award(s).

17 Does the agreement as proposed to be varied contain any terms or conditions of employment that are less beneficial than equivalent terms and conditions in the modern award(s) listed in your answer to question 11?

- Yes
- No

If you answered **Yes** – List the terms and conditions of the agreement as proposed to be varied that are **less beneficial** than equivalent terms and conditions in the modern award(s).

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18 Does the agreement as proposed to be varied omit any entitlements that the modern award(s) listed in your answer to question 11 provide?

Yes

No

If you answered **Yes** – List the entitlements provided by the modern award(s) that are **omitted** by the agreement as proposed to be varied.

19 Does the agreement as proposed to be varied contain any terms or conditions of employment different to those under the modern award(s) listed in your answer to question 11, which you have not already identified in your answers to questions 15 to 18?

Yes

No

If you answered **Yes** – List these terms and conditions.

20 Is the employer of the view that the agreement as proposed to be varied passes the better off overall test?

See sections 211(3)(ha), 211(4A) and 193A(3) of the [Fair Work Act 2009](#). The Commission must give consideration to any views relating to whether the agreement as proposed to be varied passes the better off overall test that have been expressed by:



- the employer or employers that are covered by the agreement
- the award covered employees for the agreement, and
- the employee organisation or employee organisations that are covered by the agreement.

Yes

No

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Referring to your answers to questions 11–19, explain why the employer is of the view the agreement as proposed to be varied does or does not pass the better off overall test.

Part 3.2 - The National Employment Standards

See Part 2-2, s.211(3) and s.186(2)(c) of the [Fair Work Act 2009](#).



The National Employment Standards are minimum employment entitlements that have to be provided to all employees. Agreements as proposed to be varied cannot exclude or provide for conditions that are less than the National Employment Standards.

21 List all clauses of the agreement as proposed to be varied that deal with the matters contained in the National Employment Standards (NES) and whether they exclude or provide a less beneficial entitlement when compared with the NES.

National Employment Standard	Agreement clause(s)	Does this clause exclude or provide a less beneficial entitlement when compared to the NES?
Maximum weekly hours		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Requests for flexible working arrangements		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Offers and requests for casual conversion		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Parental leave and related entitlements		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Annual leave		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Personal/carer's leave		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Compassionate leave		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

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National Employment Standard	Agreement clause(s)	Does this clause exclude or provide a less beneficial entitlement when compared to the NES?
Family and domestic violence leave		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Community service leave		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Long service leave		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Public holidays		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Superannuation contributions		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Notice of termination		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Redundancy pay		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Fair Work Information Statement and Casual Employment Information Statement		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

If you answered **Yes** in relation to any of the entitlements, you may include an explanation below.

Part 4 – Statistical information



This information is collected to enable the General Manager of the Fair Work Commission to comply with the statutory reporting obligations in s.653 of the [Fair Work Act 2009](#) and to be provided to the Attorney-General’s Department for inclusion in the Department’s Workplace Agreements Database.

22 What is the primary activity of the employer?



For example music retailer, plumbing contractor, steel fabricator, etc.

23 Tick the relevant boxes for the states and territories the agreement as proposed to be varied will be operating in:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia
- An external territory


24 Of the affected employees, how many employees are in the following demographic groups?

Demographic group	Number of employees
Female	
Non-English speaking background	
Aboriginal or Torres Strait Islander	
Disabled	
Part-time	
Casual	

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Under 21 years of age	
Over 45 years of age	

Signature		Date:	
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	<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>
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PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

Information sheet

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.

Better off overall test - The *better off overall test* requires the Commission to be satisfied, as at the time the application for approval of the variation was made, that each award covered employee, and each reasonably foreseeable employee would be better off overall under the agreement as proposed to be varied than under the relevant modern award.

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

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