

# About the F23DA declaration

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## Employer's declaration in relation to a variation of a supported bargaining agreement to add an employer and employees

### About employer applications under section 216AA

Under section 216A of the [Fair Work Act 2009](#), an employer and its 'affected employees' can jointly vary a supported bargaining agreement so that the employer and affected employees will become covered by the agreement. The employer must apply to the Fair Work Commission (the Commission) under section 216AA of the [Fair Work Act 2009](#) for approval of the variation.

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 Commission approves the variation.

The variation has no effect unless the Commission approves it.

### About employee organisation applications under section 216B

Under section 216B of the [Fair Work Act 2009](#), an employee organisation covered by a supported bargaining agreement can apply for the Commission to vary the agreement so that an employer that is not covered by the agreement and its affected employees will become covered by the agreement.

The 'affected employees' are employees employed by the employer, who will be covered by the agreement if the Commission varies it.

### About this declaration

An employer must lodge this declaration with the Commission:

1. To support its application made using *Form F23D – Application by an employer for approval of a variation of a supported bargaining agreement to add an employer and employees*, or
2. If an employee organisation has served it with copies of:
  - A Form F23E – *Application by an employee organisation for a variation of a supported bargaining agreement to add an employer and employees*, and
  - A Form F23EA - *Declaration of an employee organisation in relation to a variation of a supported bargaining agreement to add an employer and employees*.

An employer that will become covered by the agreement if it is varied **must** lodge a declaration using this form within 14 days after being served with the Form F23EA. Use this declaration to advise the Commission whether the employer:

- supports or opposes the proposed variation of the agreement, and
- disagrees with information in the Form F23EA declaration.

## Completing this declaration

### Complete Section 1, 2 and 4 if:

- an employer has lodged or will be lodging a *Form F23D – Application by an employer for approval of a variation of a supported bargaining agreement to add an employer and employees*, and
- you are the employer, or an officer or authorised employee completing this declaration for the employer.

### Complete Section 1, 3 and 4 if:

- a *Form F23E – Application by an employee organisation for a variation of a supported bargaining agreement to add an employer and employees* has been or will be lodged, and
- you are the employer that will become covered by the agreement if the variation is approved, or an officer or authorised employee completing this declaration for the employer.

## Lodging your completed declaration

You can lodge your application and any supporting documents with the Commission:

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

### **If you completed section 2–Declaration in support of an application under section 216AA**

**Within 14 days** after the **variation is made**, you must **lodge** with the Commission:

- The *Form F23D - Application by an employer for approval of a variation of a supported bargaining agreement to add an employer and employees*.

**Note:** the cover sheet to the Form F23D application provides a full list of documents that you must lodge with the application.

- This declaration.

### **If you completed section 3–Declaration in relation to an application under section 216B**

You must lodge this declaration with the Commission **within 14 days of being served** with the *Form F23EA–Declaration of an employee organisation in relation to a variation of a supported bargaining agreement to add an employer and employees*.

## Serving your declaration

**As soon as practicable** after lodging, you must **serve a copy** of all documents you lodged with the Commission on each employer and each employee organisation covered by the Agreement.

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

## More information

There is more information at the end of this declaration form.

## Form F23DA – Employer’s declaration in relation to a variation of a supported bargaining agreement to add an employer and employees

Fair Work Commission Rules 2024, rules 38, 39, 44 and Schedule 1

<b>I,</b>	
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[insert name of person making the declaration]

<b>of</b>	
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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:**

### Section 1 – Preliminary

#### 1.1 This declaration relates to the proposed variation of the following supported bargaining agreement (the Agreement):



Insert the name of 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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**1.2 If the Agreement is varied as proposed, the following employer and its affected employees will become covered by the Agreement (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	

**1.3 Are all of the affected employees, employees in an industry, occupation or sector declared by the Minister under section 243(2B) of the *Fair Work Act 2009*?**



See sections 216AB(1)(a), 216AC and 243(1)(b) of the [Fair Work Act 2009](#)

- Yes – Provide further details and go to section 4.
- No – Go to question 2.1.

**Section 2 – Declaration in support of an application under section 216AA**



Complete this section if your declaration is in support of the Employer’s application under section 216AA of the [Fair Work Act 2009](#) for approval of a variation of the Agreement.

Go to section 3 if your declaration is in relation to an employee organisation’s application under section 216B of the [Fair Work Act 2009](#) for a variation of the Agreement.

## Making the variation

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

Statement of Principles on Genuine Agreement.



*Affected employees* is defined in section 12 of the [Fair Work Act 2009](#).

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

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

#### 2.1 Did the Employer provide affected employees with:

- full copies of the Agreement as proposed to be varied, and
- full copies of materials incorporated by reference in the Agreement as proposed to be varied

in accordance with paragraph 5 of the Statement of Principles on Genuine Agreement?

- Yes
- 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.

#### 2.2 What steps did the Employer take so that, a reasonable time period before the start of the voting on the variation, the Employer provided to affected employees:

- a full copy of the Agreement as proposed to be varied, and
- 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 explains what a ‘reasonable time period’ includes, and paragraph 7 explains the ways that the copies may be provided to employees.

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

Date(s)	Step taken

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

Attach additional pages if necessary.

**Explaining the terms of the Agreement proposed to cover the Employer and employees**

**2.3 What steps were taken by the Employer to explain to the affected employees:**

- the terms of the Agreement proposed to cover them, and
- the effect of those terms,

**and what was explained?**

See section 216AAA(1)(a) 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 216AB(1)(c), 216AD 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.

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

Lodge copies of any materials used to explain the Agreement as proposed to be varied to the employees.

Date(s)	Step taken	What was explained

Attach additional pages if necessary.

**2.4 When the Employer explained the terms of the Agreement proposed to cover the Employer and affected employees 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 216AAA(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 216AAA(2) provides some 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.

**Include the date each step was taken.** Do not simply state that the employer took reasonable steps to ensure the explanation was provided in an appropriate manner.

**Lodge copies of any materials used** to ensure the explanation to employees was provided in an appropriate manner.

Date(s)	Step taken	Group of employees addressed

Attach additional pages if necessary.

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



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

**2.5 What steps were taken to inform affected employees of:**

- the time and place for the vote, and
- 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 step was taken.** Do not simply state that the relevant employees were notified by the specified time.

**Lodge copies of any materials given** to employees to notify them about the vote.



Date(s)	Step taken and information given

Attach additional pages if necessary.

**2.6 What was 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. Explain how the voting process ensured that each employee’s vote was not disclosed or ascertainable to the employer, and 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 employees covered and to be covered if the proposed variation is approved:**

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



See sections 216AB(1)(c), 216AD and 188(2) of the [Fair Work Act 2009](#). Also see paragraphs 17 and 18 of the Statement of Principles on Genuine Agreement.

Attach additional pages if necessary.

**Voting on the variation**



See sections 209, 211 and 216A of the [Fair Work Act 2009](#).

**2.9 Provide the following details:**

<b>What date did voting for the variation of the Agreement commence?</b>	
<b>What date was the variation made?</b>	
<b>At the time of the vote, how many affected employees of the Employer were there?</b>	
<b>How many of these employees cast a valid vote?</b>	
<b>How many of these employees voted to approve the variation?</b>	

**Requirements under section 216AB(1)(a)**

**2.10 Explain why, if the Employer and affected employees had been included in the application for a supported bargaining authorisation that was made in relation to the Agreement, it would have been appropriate for the employers and employees to be covered by the Agreement (including the Employer and affected employees) to bargain together, addressing:**

**2.10.1 the prevailing pay and conditions within the relevant industry or sector (including whether low rates of pay prevail in the industry or sector)**

**2.10.2 whether the employers have clearly identifiable common interests**

See section 243(2) of the [Fair Work Act 2009](#). Examples of common interests that employers may have include:



- a geographical location
- the nature of the enterprises to which the agreement will relate
- the terms and conditions of employment in those enterprises, and

being substantially funded, directly or indirectly, by the Commonwealth, a State or a Territory

**2.10.3 any other matters the Employer considers relevant.**

**2.10.4 are any of the affected employees covered by a single-enterprise agreement that has *not* passed its nominal expiry date?**



See sections 216AB(1)(a), 216AC and 243A(1) of the [Fair Work Act 2009](#).

Yes

No

**Further approval requirements**

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



See section 216AB(2) and (3) of the [Fair Work Act 2009](#).

*General building and construction work* is defined in section 23B of the *Fair Work Act 2009*.

Yes

No

**2.12 Is the Employer specified in a single interest employer authorisation in relation to any of the affected employees?**

Yes

No

**2.13 Are there any public interest grounds for not approving the variation?**



See section 216AB(1) of the *Fair Work Act 2009*.

Yes

No

**Go to Section 4 – Sign your declaration**

### Section 3 – Declaration in relation to an application under section 216B

Complete this section if your declaration is in relation to an employee organisation’s application under section 216B of the [Fair Work Act 2009](#) for a variation of the Agreement.

**3.1 What is the name of the employee organisation that made the application under section 216B of the *Fair Work Act 2009* (the Union)?**

**3.2 Which employees of the Employer will be covered by the Agreement if the proposed variation is made?**

Include: the number of employees, their classifications under the Agreement, the locations at which they work, and whether they are employed on a full-time, part-time or casual basis.

**3.3 Does the Employer support the proposed variation being made by the Commission?**

- Yes – Go to question 3.4
- No – Specify below the grounds on which the Employer opposes the proposed variation being made. Use numbered paragraphs.

**3.4 Does the Employer disagree with any of the statements in the Union’s declaration in support of the proposed variation?**

- Yes – Provide details below
- No – Go to Section 4 – Sign your declaration

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

Set out the statements that the Employer disagrees with. State why the Employer disagrees with them. Use numbered paragraphs.

Attach additional pages if necessary.

**Go to Section 4 – Sign your declaration**

**Form F23DA – Employer’s declaration in relation to a variation of a supported bargaining agreement to add an employer and employees****Section 4 – Sign your declaration**

**Giving false or misleading information is a serious offence** – A person who knowingly gives false or misleading information or knowingly produces a false or misleading document in relation to an application for approval of a variation of an enterprise agreement or an application to vary 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 *Criminal Code*.

<b>Signature</b>	
<b>Date</b>	

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**

## 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.

## 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](http://www.fwc.gov.au) also contains a range of information that may assist.

## Legal or other representation

Representation is where another person (such as a 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:



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- 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 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 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, express or registered post, or in person. Part 5 of Chapter 1, rule 44 and Schedule 1 of the [Fair Work Commission Rules 2024](#) deal with service.