



About the F23H application form

Application for 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:

- an employer has made a variation of a multi-enterprise agreement with affected employees, that will have the effect that the employer and affected employees will cease to be covered by the agreement, and
- the employer, an affected employee, or an employee organisation that is covered by the agreement and is entitled to represent the industrial interests of an affected employee, wants to apply for the Commission to approve the variation.

Lodging and serving your completed form

1. **Within 14 calendar days after the variation is made**, you must **lodge** with the Commission:
 - this application
 - a copy of the variation signed in accordance with regulation 2.10G of the Fair Work Regulations 2009, and
 - a copy of the agreement as to be proposed to be varied.

In addition:

- **within 14 calendar days after the variation is made** the employer that has made the variation must **lodge** with the Commission 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
- each employee organisation that is covered by the agreement and is entitled to represent the industrial interests of one or more affected employees, must **lodge** with the Commission a *Form F23HB – Declaration of employee organisation in relation to approval of a variation of a multi-enterprise agreement to remove an employer and employees* within **7 days** after being served with the Form F23HA.

The documents can be lodged by post, by fax, by email or in person at the Commission office in your state or territory.

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

You can serve a copy of the application and supporting documents by email, express post, or registered post.

Where to get help

Commission staff & resources

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

- processes in the Commission
- 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 a union or 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](#).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

Glossary of common terms

Applicant – This is the person or organisation that is making an 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 a person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or business 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 for inclusion on the case file, and 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 F23H – Application for approval of a variation of a multi-enterprise agreement to remove an employer and employees

Fair Work Act 2009, section 216EA

This is 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.

The Applicant



These are the details of the person that is making the application. This may be the employer that made the variation, an affected employee, or an employee organisation covered by the agreement that is entitled to represent the industrial interests of an affected employee.

Legal name of Applicant			
Applicant's ACN (if a company)			
Applicant's trading name or registered business name (if applicable)			
Applicant's ABN (if applicable)			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

What is the Applicant?

- The employer that made the variation with affected employees
- An employee organisation covered by the agreement that is entitled to represent the industrial interests of an affected employee
- An affected employee

Does the Applicant have a representative?



A representative is a person or organisation that is representing the Applicant. There is no requirement to have a representative.

Yes – Provide representative’s details below

No – Go to question 1.1

Applicant’s representative



These are the details of the person or organisation that is representing the Applicant (if any).

Name of person			
Firm, organisation or company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Is the representative a lawyer or paid agent?

Yes

No

1. The agreement

1.1 What is the name of the multi-enterprise 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. The employers

2.1 How many employers are covered by the Agreement?

Number of employers:	
----------------------	--

2.2 What is the industry of the employers covered by the Agreement?

--

2.3 Provide the details of all of the employers covered by the Agreement below.



If the Applicant is an employer covered by the agreement, you do not need to provide the Applicant's details again.

Legal name of employer			
Employer's ACN (if a company)			
Employer's trading name or registered business name (if applicable)			
Employer's ABN			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Attach additional pages if necessary

3. Employee organisations

3.1 Are there any employee organisations covered by the agreement?

- Yes
- No

If you answered **Yes** – Provide the details of all the employee organisations.

Name of employee organisation			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Attach additional pages if necessary.

4. The variation



You must lodge with this application:

- a copy of the variation signed in accordance with regulation 2.10G of the Fair Work Regulations 2009, and
- a copy of the agreement as proposed to be varied.

4.1 On what date was the variation made?



See section 216E of the Fair Work Act 2009. The variation is 'made' when a majority of affected employees who cast a valid vote approve the variation.

--

4.2 Is the application for approval of the variation being lodged within 14 calendar days after the date the variation was made?

- Yes
- No

If you answered **No** – Provide details of the circumstances the Commission should take into account in deciding if it is fair to extend the time for lodging the application.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	
Date	
Capacity/Position	
	If you are not the Applicant and are completing and signing this form on the Applicant's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS