



## About the F23D application form

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### **Application by an employer for approval of a variation of a supported bargaining agreement to add an employer and employees**

#### **About a variation of a supported bargaining agreement to add an employer and employees**

Under section 216A of the [Fair Work Act 2009](#), an employer and its 'affected employees' can jointly vary a supported bargaining 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 at the time the variation is made, who will be covered by the agreement if the Fair Work Commission (Commission) approves the variation.

The variation has no effect unless the Commission approves it.

#### **When to use this form**

Use this form if:

- you are an employer (or are completing this form for an employer) that has made a variation of a supported bargaining agreement with its affected employees, so that the employer and its affected employees will become covered by the agreement, and
- you want to apply under section 216AA of the [Fair Work Act 2009](#) for the Commission to approve the variation.

**Note:** If an employee organisation wishes to apply to the Commission under section 216B of the [Fair Work Act 2009](#) for approval of a variation to add an employer and its affected employees to a supported bargaining agreement, use *Form F23E - Application by an employee organisation for a variation of a supported bargaining agreement to add an employer and employees*.

## Lodging and serving your completed form

1. **Within 14 days** after the variation is made, the following must be **lodged** with the Commission:
  - this **application** form
  - a copy of the **variation** signed in accordance with regulation 2.10B of the of the [Fair Work Regulations 2009](#). The variation must be signed by:
    - The employer or a person authorised by the employer to sign the variation on its behalf — include the signature of the employer or authorised representative, full name, address and an explanation of their authority to sign the variation, and
    - At least 1 representative of the affected employees — include the representative’s signature, full name, address and an explanation of their authority to sign the variation.
  - a copy of the **supported bargaining agreement** as proposed to be **varied**
  - a **declaration in support** of the application. You must use **Form F23DA - Employer’s declaration in relation to a variation of a supported bargaining agreement to add an employer and employees**.
  - copies of any **documents provided to its affected employees or used to**:
    - explain the terms and effect of the proposed variation
    - ensure that the explanation was appropriate, taking into account the particular circumstances and needs of the affected employees.

For example, employers may have needed to consider the circumstances and needs of employees from culturally and linguistically diverse backgrounds, young employees and unrepresented employees.
    - inform them of the time, place and method of voting.

Lodge by post, email or in person at the [Commission office](#) in your state or territory.

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

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

**Note: each employee organisation** covered by the agreement can choose to advise the Commission that it supports or opposes approval of the variation and/or disagrees with information in the employer’s Form F23DA declaration. The employee organisation must lodge *Form F23EA— Declaration of an employee organisation in relation to a variation of a supported bargaining agreement to add an employer and employees*. The employee organisation must lodge its Form F23EA declaration within 14 days after it was served with the employer’s Form F23DA declaration.

## 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](http://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 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 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](#).

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, express or registered post, or in person. Part 5 of Chapter 1 and Schedule 1 of the [Fair Work Commission Rules 2024](#) 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 F23D – Application by an employer for approval of a variation of a supported bargaining agreement to add an employer and employees

Fair Work Act 2009, section 216AA, Fair Work Commission Rules 2024, rule 38, rule 44 and Schedule 1

This is an application to the Fair Work Commission under section 216AA of the [Fair Work Act 2009](#) for approval of a variation of a supported bargaining agreement made under section 216A of the Act.

## The Applicant



These are the details of the employer that is making the application. This is the employer that made the variation with its affected employees.

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

### 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

**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			
Email address			

**Is the representative a lawyer or paid agent?**

<input type="checkbox"/> Yes — please select:	<input type="checkbox"/> Lawyer
	<input type="checkbox"/> Paid agent
<input type="checkbox"/> No	

**1. The Agreement**

**1.1 What is the name of the supported bargaining 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:	
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**2.2 What is the industry of the employers covered by the Agreement?**

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

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			
Email address			

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			
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			
Email address			

Attach additional pages if necessary.

### 4. The Variation

#### 4.1 One what date was the variation made?



See section 216A(4) of the Fair Work Act 2009. The variation is *made* when a majority of affected employees who cast a valid vote approve the variation.

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**4.2 Will the application for approval of the variation be lodged within 14 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.

**Authority to sign and signature**



For 'Authority to sign':

- If you are the Applicant—insert 'Applicant'
- If you are an employee of a company or organisation that is the Applicant—insert your position title
- If you are the Applicant's representative and have provided your details in this form—insert 'Representative'.

<b>Authority to sign</b>	
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

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

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS