



About the F23EA declaration

Declaration of an employee organisation 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 that is 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 employee organisation will use this declaration:

1. To support its application made using *Form F23E – Application by an employee organisation for a variation of a supported bargaining agreement to add an employer and employees*, or
2. If an employer has served it with copies of:
 - *Form F23D – Application by an employer for approval of a variation of a supported bargaining agreement to add an employer and employees*, and
 - *Form F23DA – Employer's declaration in relation to a variation of a supported bargaining agreement to add an employer and employees*.

An employee organisation can choose to advise the Commission whether it:

- supports or opposes approval of the variation, or

- disagrees with information in the employer's Form F23DA declaration

by lodging this Form F23EA declaration **within 14 days** after the day it was served with the employer's Form F23DA declaration.

Completing this declaration

Complete Section 1, 2 and 4 if:

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

Complete Section 1, 3 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 an officer or authorised employee of an employee organisation that is covered by the agreement, **and**
- your organisation wants to advise the Commission that it supports or opposes approval of the variation or disagrees with information contained in the employer's Form F23DA declaration.

Lodging your completed declaration

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

If you completed Section 2—Declaration in support of an application under section 216B

Lodge with the Commission:

- The *Form F23E – Application by an employee organisation for a variation of a supported bargaining agreement to add an employer and employees*.

Note: the cover sheet to the Form F23E 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 216AA

Lodge this declaration with the Commission **within 14 days of receiving** the *Form F23DA - Employer's declaration 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 this declaration with the Commission, you must **serve a copy** of all documents you lodged with the Commission on:

- the employer that will become covered by the agreement if the variation is approved or made (as the case may be), and
- each employer covered by the agreement, and
- each other employee organisation covered by the agreement.

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

More information

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

Form F23EA – Declaration of an employee organisation 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

I,	
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[insert name of person making the declaration]

of	
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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 I am an officer or authorised employee of the following employee organisation (the Union):

Name of Union	
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1.2 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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Form F23EA – Declaration of an employee organisation in relation to a variation of a supported bargaining agreement to add an employer and employees

1.3 If the Agreement is varied as proposed, the following employer and its affected employees will become covered by the Agreement (the Employer):

Name of Employer	
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1.4 Is the Union covered by the Agreement?

- Yes
- No

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

- Yes – provide further details. Then go to section 4.
- No – Go to question 2.1

Section 2 — Declaration in support of an application under section 216B

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

Go to section 3 if your declaration is in relation to the Employer’s application under section 216AA of the Act for approval of a variation of the Agreement.

2. Majority support

2.1 Do a majority of the affected employees want to be covered by the Agreement?

See section 216BA(1)(a) of the [Fair Work Act 2009](#).



Affected employees is defined in section 12 of the Act. See page (ii) of this form. The Commission must be satisfied that a majority of employees who are employed by the Employer at a time determined by the Commission and who will be covered by the Agreement as proposed to varied, want to be covered by the Agreement.

- Yes — Explain below how and at what time the Union determined that a majority of the affected employees want to be covered by the Agreement
- No

Why it is appropriate for the employees to be covered by the Agreement



See sections 216BA(1)(b) and 216BA(2)(b) of the [Fair Work Act 2009](#). In determining whether it is satisfied it is appropriate for employees of the Employer to be covered by the Agreement, the Commission may have regard to the matters referred to in section 243 of the Act.

2.2 Why is it appropriate for the affected employees to be covered by the Agreement?

Have regard to your answer to question 2.1 and any other matters the Union considers relevant.

2.3 If your answer to question 2.1 was No—Why is it appropriate for the affected employees to be covered by the Agreement? Answer this question by addressing:

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

2.3.2 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.

2.3.3 any other matters the Union considers relevant**3. Further approval requirements****3.1 As a result of the variation, would the Agreement cover employees in relation to general building and construction work?**

See section 216BA(3)(a) of the [Fair Work Act 2009](#).

General building and construction work is defined in section 23B of the Act.

Yes

No

3.2 Are any of the affected employees covered by an enterprise agreement that has not passed its nominal expiry date?



See section 216BA(3)(b) of the [Fair Work Act 2009](#).

Yes

No

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



See section 216BA(4) 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 216AA

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

4.1 Does the Union want to advise the Commission that it supports or opposes approval of the variation by the Commission?

- Yes
- No — Go to question 4.4

4.2 Does the Union support approval of the variation by the Commission?

- Yes
- No — Specify the grounds on which the Union opposes approval of the variation, using numbered paragraphs.

Attach additional pages if necessary

4.5 Does the Union want to advise the Commission that it disagrees with any of the statements in the Employer’s declaration in support of the variation?

- Yes — Provide details of the Employer’s declaration.
- No — Go to Section 4 – Sign your declaration

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

Form F23EA – Employee organisation’s declaration in relation to a variation of a supported bargaining agreement to add an employer and employees

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

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

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

Go to Section 4 – Sign your declaration.

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 sections 137.1 and 137.2 of the *Criminal Code*.

Signature	
Date	

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PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

Form F23EA – Declaration of an employee organisation in relation to a variation of a supported bargaining agreement to add an employer and employees

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 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.