



About the F23FA declaration

Employer's declaration in relation to a variation of a single interest employer agreement to add an employer and employees

About employer applications under section 216DA

Under section 216D of the [Fair Work Act 2009](#), an employer and its 'affected employees' can jointly vary a single interest employer 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 Commission approves the variation.

The employer must apply to the Fair Work Commission (the Commission) under section 216DA of the Act for approval of the variation. The variation has no effect unless the Commission approves it.

About employee organisation applications under section 216DB

Under section 216DB of the [Fair Work Act 2009](#), an employee organisation covered by a single interest employer agreement can apply to the Commission for approval of a variation of 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 at the time the variation is made, who will become covered by the agreement if the variation is approved by the Commission.

Note: A variation has no effect unless it is approved by the Commission.

About this declaration

An employer must lodge this declaration with the Commission:

1. To support its application made using *Form F23F – Application by an employer for approval of a variation of a single interest employer agreement to add an employer and employees*, or
2. If an employee organisation has served it with copies of:
 - *Form F23G – Application by an employee organisation for approval of a variation of a single interest employer agreement to add an employer and employees*, and
 - *Form F23GA – Declaration of an employee organisation in relation to a variation of a single interest employer 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 the day it was served with the Form F23GA. 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 F23GA declaration.

Completing this declaration

Complete Section 1, 2 and 4 if:

- an employer has lodged or will be lodging a *Form F23F – Application by an employer for approval of a variation of a single interest employer 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 F23G – Application by an employee organisation for approval of a variation of a single interest employer 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 form for the employer.

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 216DA

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

- the *Form F23F – Application by an employer for approval of a variation of single interest employer agreement to add employer and employees.*

Note: the cover sheet to the Form F23F application provides a full list of documents that you must lodge with the application, and

- this declaration.

If you completed section 3—Declaration in relation to an application under section 216DB

You must lodge this declaration with the Commission **within 14 days of receiving** the *F23GA—Declaration of an employee organisation in relation to a variation of a single interest employer 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 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 F23FA – Employer’s declaration in relation to a variation of a single interest employer agreement to add an employer and employees

Fair Work Commission Rules 2024, rules 41, 42, 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 This declaration relates to the proposed variation of the following single interest employer 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	

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

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

Go to Section 3 if your declaration is in relation to an employee organisation’s application under section 216DB of the Act for approval of a variation of the Agreement.

2. Making the variation

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

Affected employees is defined in section 216D(1) of the Act.



See sections 216DC(1)(b)(ii), 216DD and 188(1) of the [Fair Work Act 2009](#), and paragraph 4 of the Statement of Principles on Genuine Agreement.

The Commission must take into account 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 any other material incorporated by reference in the Agreement

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 says what a ‘reasonable time period’ includes, and paragraph 7 says how the copies may be provided to employees.

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

Date(s)	Step taken

Attach additional pages if necessary

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

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

and what was explained?

See section 216DAA 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 216DC(1)(b)(ii), 216DD 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.



The effects of the variation on the affected employees can be explained with reference to the difference in entitlements and other terms and conditions of the Agreement as proposed to be varied and any applicable modern award.

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 as 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 216DAA(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 216DAA(2) provides as 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 216DC(1)(b)(ii), 216DD and 188(1) of the [Fair Work Act 2009](#), and paragraphs 15 and 16 of the Statement of Principles on Genuine Agreement.

A reasonable opportunity to vote on the variation in a free and informed manner should include a voting process that ensures the secrecy of each employee’s vote, and a method and period of voting that provides all employees with a fair and reasonable opportunity to vote.

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 all employees entitled to vote were provided with a fair and reasonable opportunity to cast a vote, and explain how the voting process ensured that each employee’s vote was not disclosed to or ascertainable by the employer.

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 all the employees covered and to be covered if the proposed variation is approved:

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



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

Voting on the variation



See section 216D of the [Fair Work Act 2009](#).

2.9 Provide the following details:

What date did voting for the variation of the Agreement commence?	
What date was the variation made?	
At the time of the vote, how many affected employees of the Employer were there?	

How many of these employees cast a valid vote?	
How many of these employees voted to approve the variation?	

3. Common interest and reasonably comparable business activities

3.1 Do the employers covered by the Agreement and the Employer carry on similar business activities under the same franchise, as:

- franchisees of the same franchisor
- related bodies corporate of the same franchisor, or
- any combination of the above?



See section 216DC(2) of the Fair Work Act 2009.

- Yes—Insert the details requested below and go to question 4.1
- No—Answer questions 3.2–3.5

3.2 Do the employers covered by the Agreement and the Employer have clearly identifiable common interests?



See section 216DC(3)(a) of the Fair Work Act 2009. Section 216DC(3A) gives as examples of matters that may be relevant to determining whether the employers have a common interest:

- geographical location
- regulatory regime, and
- the nature of the enterprises to which the Agreement relates, and the terms and conditions of employment in those enterprises

- Yes
- No

3.3 Would it be contrary to the public interest to approve the variation?



See section 216DC(3)(b) of the Fair Work Act 2009

Yes

No

3.4 Having regard to your answers to questions 3.2 and 3.3, explain why it is appropriate for the Commission to approve the variation.

3.5 Explain why the operations and business activities of the Employer are reasonably comparable with those of the other employers that are covered by the Agreement.



See section 216DC(1)(b)(v) of the Fair Work Act 2009.

4. Further approval requirements

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



See section 216DC(4)(b) of the Fair Work Act 2009.

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

Yes

No

4.2 Is the Employer specified in a supported bargaining authorisation in relation to any of the affected employees?



See section 216DC(5) of the Fair Work Act 2009.

Yes

No

4.3 Has the Employer been bargaining in good faith for a proposed enterprise agreement that will cover the Employer and the affected employees, or substantially the same group of the affected employees, other than the Agreement sought to be varied?



See section 216DC(3B) 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 216DB

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

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

5.2 Which employees of the Employer will be covered by the Agreement if the variation is approved?



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.

5.3 Does the Employer support approval of the variation by the Commission?

- Yes — Go to question 5.4.
- No — Specify below the grounds on which the Employer opposes the variation being approved. Use numbered paragraphs.

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

Yes — Provide details below

No – go to question 5.5.

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

5.5 Does the Employer and affected employees have a history of effectively bargaining in relation to one or more enterprise agreements that have covered the employer and the affected employees, or substantially the same group of employees?



See section 216DC(3B)(b) of the Fair Work Act 2009.

Yes — Provide details below

No — Go to Section 4 – Sign your declaration.

Attach additional pages if necessary

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 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*.

Signature	
Date	

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 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.