



NATIONAL PRACTICE LEADER'S STATEMENT

Fair Work Act 2009

Section 216AA variations to add employers and their employees to the Early Childhood Education and Care Multi-employer Agreement 2024-2026

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 30 APRIL 2025

[1] This statement provides an update on the Fair Work Commission's approach to applications to vary the *Early Childhood Education and Care Multi-employer Agreement 2024-2026 (ECEC Agreement)* under section 216AA of the *Fair Work Act 2009* (the **Act**) to add employers and their relevant employees.

[2] The context for the making of this supported bargaining agreement (outlined in more detail below), the circumstances of the early childhood care and education (**ECEC**) sector and the large volume of applications being made under s.216AA to vary the ECEC Agreement have warranted a tailored approach by the Commission.

Background Information

[3] On 27 September 2023, a Full Bench of the Commission made a [supported bargaining authorisation](#) covering 64 employers in ECEC sector. The Full Bench also issued an accompanying [decision](#).¹

[4] On 10 December 2024, a Full Bench of the Commission approved the ECEC Agreement.²

[5] Under sections 216A and 216B of the Act, once a supported bargaining agreement is approved by the Commission, certain parties with standing can make an application to the Commission to approve a variation to the agreement to add employers and their employees to its coverage.

[6] The Commission understands that the Commonwealth Government has made available funding for an Early Childhood Education and Care Worker Retention Payment (**EWRP**). This funding grant is administered by the Commonwealth Department of Education.

[7] Amongst other things, to qualify for the grant, employers must have an eligible workplace instrument that passes on the pay rises outlined in the grant.

[8] The Commission understands that the ECEC Agreement meets the definition of eligible workplace instrument as required by the Department of Education's EWRP grant.

[9] The Commission has consulted with the key bargaining representatives for the ECEC Agreement to ensure that our processes for the s.216AA applications to vary the agreement to

add employers and their employees to its coverage are efficient, transparent, and clear, and consistent with the requirements of the Act.

[10] The tailored processes are set out below.

Major case webpage and subscription service

[11] The Commission has established a major cases webpage on our website to house information and notify of updates on the ECEC Agreement, particularly with respect to employers and their relevant employees that may wish to join the agreement ([Early childhood education and care supported bargaining agreement | Fair Work Commission](#)).

[12] On this webpage, the Commission publishes a list of s.216AA applications in progress. This list of applications in progress includes the Commission issued matter number, names of employers and date the application was received. This list promotes transparency given the potential number of applications and allows the Commission to effect service as provided in Schedule 1 of the *Fair Work Commission Rules 2024 (Rules)* (further outlined below).

[13] In the event that one of the employers or employee organisations covered by the ECEC Agreement wish to enquire about an application to vary the ECEC Agreement's coverage, they can use the list to identify the relevant application and can make a request to the Commission for a copy of that application.

[14] A specific subscription service list, the 'Early childhood education and care supported bargaining agreement list', has been created for stakeholders and parties with interest in the ECEC Agreement and its subsequent s.216AA variations. Interested parties can subscribe to the subscription list to receive updates about new information, new applications lodged, and decisions published on the major case webpage.

Batching schedule and unofficial consolidated agreement

[15] The Commission has developed a monthly schedule to process s.216AA applications to vary the ECEC Agreement. Where possible, the Commission hears matters together and publishes a single decision each month for all applications lodged. All applications are considered on their own merits having regard to the relevant supporting evidence and material. There is no certainty each application will be approved.

[16] This 'batching' process results in an updated version of the ECEC Agreement being published on a predictable schedule.

[17] To assist interested parties, Commission staff are maintaining an updated unofficial version of the Agreement which is housed on the major cases page. This unofficial consolidated version of the Agreement is updated to add employers and their employees to the coverage of the Agreement when applications to vary have been approved.

[18] Parties seeking to make an application to vary can provide this unofficial consolidated Agreement to employees as part of the explanation of the proposed variations and supply it to the Commission with their application if a variation is made.

[19] The below schedule gives a ‘cut off’ date each month. Applications considered in that month’s decision will be lodged with us prior to the cut-off date. Applications lodged after the cut-off date will generally be included in the following month’s decision.

Application cut-off date	Likely decision date
7 March 2025	18 March 2025
4 April 2025	15 April 2025
2 May 2025	13 May 2025
30 May 2025	10 June 2025
27 June 2025	8 July 2025

Substituted services orders

[20] In two orders I made on 16 January 2025, the Commission modified the service requirements for applications to vary the ECEC Agreement under s.216AA as contained in the Rules. The Rules require applications of this kind (and supporting declarations provided by the employer or employee organisations) to be served on each of the employers and employee organisations who are at the time already covered by, in this case, the ECEC Agreement.

[21] The modified service arrangements³ dispense with these requirements and instead require the applicant employers (and the unions if they make a declaration) to provide a copy of the application and the associated declaration(s) to the following parties:

Organisation	Email address/es
Community Child Care Association	laurastevens@cela.org.au
Community Early Learning Australia	laurastevens@cela.org.au
Australian Childcare Alliance	paul@mondocorp.com.au Nigel.Ward@ablawyers.com.au
United Workers’ Union	eccec-agreements@unitedworkers.org.au larissa.harrison@unitedworkers.org.au
Australian Education Union	Cara.Nightingale@aeuvic.asn.au
Independent Education Union	michaela@ieu.asn.au

[22] If a copy of the application and the associated declaration(s) have been provided to the contacts in the table above, there is no remaining requirement to provide a copy of the relevant application form and accompanying documents to each employer currently covered by the ECEC Agreement or those that are added later.

[23] However, the applicant and any other employer applying to be added to the ECEC Agreement must provide a copy of the application and associated declaration(s) upon request by an employer covered by the ECEC Agreement.

[24] The following notice is also provided to the existing employers, and any employers who are later added to the ECEC Agreement. It reads as follows:

To whom this may concern,

You are an employer covered by the Early Childhood Education and Care Multi-Employer Agreement 2024-2026. Certain employers and their employees in the early childhood education and care sector can join the coverage of this agreement. To join the agreement, a variation must be made and then approved by the Fair Work Commission.

When an employer applies to the Commission to approve a variation, their details will be added to the 'variations in progress' section on the Commission's dedicated webpage for this Agreement – see here: <https://www.fwc.gov.au/hearings-decisions/major-cases/early-childhood-education-and-care-supported-bargaining-agreement>

If you would like to view a copy of an employer's variation application, you can contact them and request that they provide you with a copy.

[25] The same arrangements will apply to any union declaration.

[26] The substituted service orders operate in tandem with the major cases webpage that has been set up and discussed above.

Conclusion

[27] The above processes have been implemented to facilitate an efficient, transparent and clear process for the s.216AA applications to vary the ECEC Agreement to add employers and their employees.

[28] I observe that as at the last variation decision date, 15 April 2025, there are 289 employers and approximately 40,000 employees now covered by the ECEC Agreement.

[29] As the Commission maintains ongoing consultation and communication with key stakeholders to the ECEC Agreement, it is possible that further changes may be made, in accordance with the Act, Regulations and Rules.



DEPUTY PRESIDENT
NATIONAL PRACTICE LEADER FOR BARGAINING

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<[PR786499](#)>

¹ *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [\[2023\] FWCFB 176](#).

² *Application by the United Workers' Union* [\[2024\] FWCFB 461](#).

³ As set out in ADM2025/1 and ADM2025/2.