



## About the F23GA declaration

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### **Declaration of an employee organisation 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 employee organisation will use this declaration:

1. To support its application made using *Form F23G – Application by an employee organisation for approval of a variation of a single interest employer agreement to add an employer and employees*, or
2. If an employer has served it with copies of:
  - *Form F23F – Application by an employer for approval of a variation of a single interest employer agreement to add an employer and employees*, and
  - *Form F23FA - Employer's declaration in relation to variation of a single interest employer agreement to add an employer and employees*.

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

- supports or opposes the proposed variation of the agreement, or
- disagrees with information in the Form F23FA declaration

by lodging this Form F23GA declaration **within 14 days** after the day it was served with the employer's Form F23FA declaration.

## Completing this declaration

### Complete Section 1, 2 and 4 if:

- an employee organisation has lodged or will be lodging a *Form F23G – Application by an employee organisation for approval of variation of a single interest employer 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 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 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 F23FA 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 216DB**

Lodge with the Commission:

- Form F23G – Application by an employee organisation for approval of a variation of a single interest employer agreement to add an employer and employees.*

**Note:** the cover sheet to the Form 23G 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 216DA**

Lodge this declaration with the Commission **within 14 days of being served** with the *Form F23FA - Employer's declaration in relation to 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:

- the employer that will become covered by the agreement if the variation is approved,
- 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 and registered post.

## More information

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

## Form F23GA – Declaration of an employee organisation 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 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 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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**1.3 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	
Employer's ACN (if a company)	
Employer's trading name or registered business name (if applicable)	
Employer's ABN	

**1.4 Is the Union covered by the Agreement?**

- Yes
- No

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

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

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

**2. Common interest and reasonably comparable business activities**



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

**2.1 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?

- Yes—Insert the details requested below and go to **Section 4—Sign your declaration**.
- No—Answer questions 2.2–2.6

If you answered **Yes**—Provide details of the franchisor and the relationship of each employer to the franchisor:

**2.2 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

If you answered **Yes**—Explain why the employers covered by the Agreement and the Employer have clearly identifiable common interests:

Attach additional pages if necessary

**2.3 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

If you answered **No**—Explain why it would not be contrary to the public interest to approve the variation:

**2.4 Having regard to your answers to questions 2.2 and 2.3, explain why it is appropriate for the Commission to approve the variation.**

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



Also see question 2.6.

**2.5 Explain how 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.



Also see question 2.6

**2.6 Does the Employer employ 50 or more employees at the time the Union’s application for approval of the variation is made?**



Sections 216DC(3AB) and 216DC(1AA) of the Fair Work Act 2009 provide that if the Employer employs 50 or more employees at the time the application is made and the application has been made by an employee organisation, it is presumed the requirements respectively of sections 216DC(3) and 216DC(1)(b)(v) are met, unless the contrary is proved.

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Section 216DC(3AC) of the Act specifies how the number of employees is calculated.

- Yes
- No

### 3. Further approval requirements



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

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

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

- Yes
- No

**3.2 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.

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

- Yes
- No

**3.3 Has the Employer been bargaining in good faith for a proposed enterprise agreement that will or has covered the Employer and the affected employees, or substantially the same group of the affected employees, other than the Agreement?**



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

The Commission may also refuse to approve the variation if it is satisfied that 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.

- Yes – provide details as to why the Agreement should be varied.
- No – go to question 3.4.



**3.4 Does the Employer employ at least 20 employees at the time the Union’s application for approval of the variation is made?**



See sections 216DC(1)(b)(iii) and 216DC(1A)(a) of the Fair Work Act 2009.

Section 216DC(3AC) of the Act specifies how the number of employees is calculated.

Yes

No

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



See sections 216DC(1)(b)(iii) and 216DC(1A)(b) of the Fair Work Act 2009.

The Commission may work out whether a majority of affected employees want to be covered by the Agreement using any method it considers appropriate.

Yes

No

If you answered **Yes**—Explain how and at what time the Union determined that a majority of the affected employees want to be covered by the Agreement:

**3.6 Does section 216DC(1C) apply to the Employer?**



Section 216DC(1C) applies to the Employer if:

- the Employer and the affected employees are covered by another enterprise agreement that has not passed its nominal expiry date at the time the Commission will approve the variation, or
- the Employer and an employee organisation entitled to represent the industrial interests of one or more of the affected employees, have agreed in writing to bargain for a proposed single-enterprise agreement that would cover the Employer and the affected employees or substantially the same group of the affected employees.

Yes

No

**Section 3 — Declaration in relation to an application under section 216DA**

Complete this section if your declaration is in relation to 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.

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

- Yes
- No

**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

**4.3 Does the Union want to advise the Commission that it disagrees with one or more statements in the Employer’s declaration in support of the variation?**

- Yes — Provide details of the Employer’s declaration. Then go to question 4.4
- No — Go to Section 4 – Sign your declaration

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

**4.4 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.

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

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

Attach additional pages if necessary

**Go to Section 4 – Sign your declaration.**

**Section 4 — Sign your form**

**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 sections 137.1 and 137.2 of the *Criminal Code*.

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

**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](http://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.