



## About the F23HA declaration

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### Employer's declaration in support of approval of a variation of a multi-enterprise agreement to remove an employer and employees

#### About a variation of a multi-enterprise agreement to remove an employer and employees

Under section 216E of the [Fair Work Act 2009](#), an employer and its 'affected employees' can vary a multi-enterprise agreement so that the employer and affected employees will cease to be covered by the agreement.

The variation has no effect unless it is approved by the Fair Work Commission (Commission).

The 'affected employees' are the employees who will cease to be covered by the agreement if the variation is approved by the Commission.

Only non-greenfields multi-enterprise agreements made on or after 6 June 2023 can be varied in this way.

#### When to use this form

Use this form if:

- a Form F23H – Application for approval of a variation of a multi-enterprise agreement to remove an employer and employees has been, or will be, lodged and
- you are the employer that made the variation with its affected employees, or an officer or authorised employee completing this form for the employer.

#### Lodging and serving your completed form

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

- Form F23H – Application for approval of a variation of a multi-enterprise agreement to remove an employer and employees
- This declaration
- copies of any documents provided to affected employees to inform them of the time, place and method of voting.

**Note:** the cover sheet to the Form 23H application provides a full list of documents you must lodge with the application.

Lodge by email, post 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 other employer and each employee organisation that is covered by the agreement.

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

**Note:** Each employee organisation that is covered by the agreement and is entitled to represent the industrial interests of 1 or more affected employees must lodge a declaration within 14 days of being served with the Form F23HA declaration by the employer. The employee organisation must use *Form F23HB—Declaration of employee organisation in relation to approval of a variation of a multi-enterprise agreement to remove an employer and employees*. The Form F23HB declaration is in relation to:

- the vote on the variation,
- whether the employee organisation agrees to the variation of the agreement, and
- whether the employee organisation disagrees with information in the employer's Form F23HA declaration.

## 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.

### 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 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:

- 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.

## 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.



**Remove this cover sheet** and keep it for future reference – it contains useful information.

# Form F23HA – Employer’s declaration in support of approval of a variation of a multi-enterprise agreement to remove an employer and employees

[Fair Work Act 2009](#), section 216EA, Fair Work Commission Rules 2024, rule 43, rule 44, and Schedule 1

This is a declaration in support of an application to the Fair Work Commission under section 216EA of the [Fair Work Act 2009](#) for approval of a variation of a multi-enterprise agreement made under section 216E of the Fair Work Act.

I,	
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[insert name of person making the declaration]

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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:

## 1. Preliminary

### 1.1 What is the name of the employer that made the variation with its affected employees (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	
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**1.2 What is the name of the 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.

**1.3 Of the affected employees of the Employer (Affected Employees) covered by this Agreement, how many Affected Employees are in the following demographic groups?**

Demographic group	Number of affected employees
Female	
Non-English speaking background	
Aboriginal or Torres Strait Islander	
Disabled	
Part-time	
Casual	
Under 21 years of age	
Over 45 years of age	

## 2. Making the variation

### 2.1 Describe the steps the Employer took to give the Affected Employees a reasonable opportunity to decide whether they wanted to approve the proposed variation.



See section 216E(5)(b) of the *Fair Work Act 2009*. Before requesting that Affected Employees approve the variation by voting for it, the Employer must give the employees a reasonable opportunity to decide whether they want to approve the proposed variation.

Date	Step taken

### 2.2 Describe the steps the Employer took to notify the Affected Employees of:

- (a) the time and place at which the vote will occur, and
- (b) the voting method that will be used.



See section 216E(5)(a) of the *Fair Work Act 2009*. Before requesting that affected employees approve the variation by voting for it, the Employer must take all reasonable steps to notify the employees of the time and place at which the vote will occur and the voting method.

Describe how the Affected 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 of these steps was taken.

Also lodge copies of any materials that were provided to employees to notify them about the vote.

Date(s)	Steps taken and information given to Affected Employees about time and place for the vote and voting method

### 2.3 Describe the detail of the voting method used



See sections 216EA(6) and 216EB(b) of the *Fair Work Act 2009*.

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### 2.4 Provide the following dates of the following events:

Event	Date
The date voting on the variation <b>commenced</b> (that is, the first date that an employee was able to cast a vote).	
The date the variation was <b>made</b> (that is, the date on which the voting process by which the employees approved the variation concluded).	

### 2.5 Provide the following details about the vote on the variation:

At the time of the vote, how many Affected Employees were there?	
How many Affected Employees cast a valid vote?	
How many Affected Employees voted to approve the variation?	

## 3. Other approval requirements

### 3.1 Has each employee organisation that is covered by the Agreement and is entitled to represent the industrial interests of one or more Affected Employees, agreed to the variation?




See section 216EB(d) of the *Fair Work Act 2009*.

Yes

No



Form F23HA – Employer’s declaration in support of approval of a variation of a multi-enterprise agreement to remove an employer and employees

Signature		Date:	
	<p>Giving false or misleading information is a serious offence.</p> <p>A person who knowingly gives false or misleading information or knowingly produces a false or misleading document in support of an application for variation of an enterprise agreement is guilty of an offence, the punishment for which is imprisonment for up to 12 months - see section 137.1 and section 137.2 of the <i>Criminal Code</i>.</p>		
PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS			