



Employer's declaration in support of a variation of an enterprise agreement

About variations to enterprise agreements

Enterprise agreements are agreements made at the enterprise level that contain terms and conditions of employment.

Enterprise agreements can be varied in two ways:

- by agreement between the employer and employees **or**
- to remove ambiguity or uncertainty.

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

For information about the process that employers and employees must follow to vary an enterprise agreement see the [Vary an agreement](#) page on the Commission's website.

Who can use this form

Use this form if:

- a Form F23 – Application for approval of variation of an enterprise agreement has been or is being lodged with the Commission **and**
- you are an employer that is covered by the agreement (or an officer or authorised employee completing this form for an employer).

Lodgment and service of your completed form

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

- This declaration **and**
- Copies of any materials provided to employees to notify them of the time and place at which the vote was to occur and the voting method to be used (see question 2.2) **and**
- Copies of any materials used to explain to employees the terms of the variation and the effect of those terms (see question 2.3) **and**
- Copies of any materials used to ensure the explanation was provided in an appropriate manner taking into account the particular circumstances and needs of the relevant employees (see question 2.4)

If you are lodging this form with the Form F23, you can use the Commission's [Online Lodgment Service \(OLS\)](#). Alternatively, you can lodge:

- by email to lodge@fwc.gov.au, or
- by post or in person at the [Commission's office](#) in your state or territory.

Note: Form F23A and Form F23B declarations must be lodged respectively for **each employer** and **each employee organisation** that is covered by the agreement.

2. **As soon as practicable** after this declaration is lodged with the Commission, you must **serve a copy** of this declaration upon:
- each employer that is covered by the agreement **and**
 - each employee organisation that is covered by the agreement.

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.

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 family member or friend, 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 **or**
- 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 12(2) of the [Fair Work Commission Rules 2013](#) 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 and 12A of the [Fair Work Commission Rules 2013](#) 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, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) 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 F23A – Employer’s declaration in support of a variation of an enterprise agreement

[Fair Work Act 2009](#), s.210; [Fair Work Commission Rules 2013](#), rule 25 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission for approval of a variation of an enterprise agreement under Part 2-4 of the [Fair Work Act 2009](#).

I,	
----	--

[insert name of person making the declaration]

--

[insert postal address of person making the declaration]

--	--	--

[insert suburb]

[insert State or Territory]

[insert postcode]

--

[insert occupation of person making the declaration]

declare that:

Part 1 – Preliminary

1.1 What is the name of the employer?

Legal name of employer	
Employer’s ACN (if a company)	
Employer’s trading name or registered business name (if applicable)	

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement

Employer’s ABN	
----------------	--

1.2 Is the employer a “designated emergency management body” as defined in s.195A(4) and (5) of the [Fair Work Act 2009](#)?

- Yes
- No

1.3 What is the name of the agreement that is proposed to be varied?



Write the name exactly as it appears in the title clause of the agreement and include the Agreement ID/Code Number if known.

--

1.4 What kind of agreement is the enterprise agreement?

- A single enterprise agreement
- A multi-enterprise agreement

Part 2 – Requirements for approval

Variation genuinely agreed

2.1 What steps were taken by the employer to ensure that the affected employees:

- a. were given a copy of the written text of the variation and any other material incorporated by reference in the variation during the access period, or
- b. had access to a copy of the above materials throughout the access period?



See sections 211(3), 207 and 180(2) of the [Fair Work Act 2009](#), and regulation 2.09B of the [Fair Work Regulations 2009](#).

The employer must take all reasonable steps to ensure affected employees are given or have access to the materials at the specified time. The ‘affected employees’ are defined in s.207(2) as the employees employed at the time who are covered by the agreement and the employees employed at the time who will be covered by the agreement if the variation is approved by the Commission.

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement

The ‘access period’ is defined in s.180(4) as the 7-day period immediately before the start of the voting process for the variation of the agreement. (The length of the access period was temporarily modified due to the COVID-19 pandemic to **1 day** for access periods starting on and between 17 April 2020 and 12 June 2020. Access periods commencing on or after 13 June 2020 must be 7 days.)

Describe each step taken and provide the date on which it was taken.

Step taken	Date of step

2.2 What steps did the employer take to notify the affected employees by the start of the access period of:

- a. the time and place at which the vote was to occur, and
- b. the voting method to be used?



See sections 211(3), 207 and 180(3) of the *Fair Work Act 2009*. The employer must take all reasonable steps to notify affected employees by the specified time.

Do not simply state that the affected employees were notified by the specified time. Describe the steps taken and the information given to employees, and provide the date on which each step was taken. Also lodge copies of any materials that were provided to employees to notify them of the time and place at which the vote was to occur and the voting method to be used.

Step taken and the information given	Date of step

2.3 What steps were taken by the employer to explain the terms of the variation, and the effect of those terms, to the affected employees?

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement



See sections 211(3) and 180(5) of the [Fair Work Act 2009](#). The employer must take all reasonable steps to ensure the explanation is given to affected employees.

Do not simply state that the terms of the variation were explained to affected employees. Describe the steps taken and what was explained, and provide the date on which each step was taken. Also lodge copies of any materials that were used to explain to employees the terms of the variation and the effect of those terms.

Step taken and the explanation given	Date of step

2.4 When the employer explained the terms of the variation, 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 sections 211(3) and 180(5)(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. Examples of employees whose circumstances and needs are to be taken into account include employees from non-English speaking backgrounds and young employees.

Do not simply state that the employer took reasonable steps to ensure the explanation was provided in an appropriate manner. Describe the steps taken, identifying the relevant group of employees addressed, and provide the date on which each step was taken. Also lodge copies of any materials that were used to ensure the explanation to employees was provided in an appropriate manner (if not lodged in response to question 2.3).

Step taken	Relevant group of employees addressed	Date of step

2.5 Provide the following dates:

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement



See s.209 of the [Fair Work Act 2009](#)

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

2.6 Provide the following details about the vote on the variation:

At the time of the vote, how many affected employees were there?	
How many of these employees cast a valid vote?	
How many of these employees voted to approve the variation?	

Interaction with the National Employment Standards

2.7 List all clauses of the agreement as proposed to be varied that deal with the matters contained in the National Employment Standards.



See Part 2-2 – National Employment Standards of the [Fair Work Act 2009](#)

2.8 Do any terms of the agreement as proposed to be varied exclude in whole, or in part, the National Employment standards?

- Yes
- No

If you answered **Yes** – List the terms below.

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement

2.9 Are any terms of the agreement as proposed to be varied detrimental to an employee in any respect when compared to the National Employment Standards?

Yes

No

If you answered **Yes** – List the terms below.

Part 3 – Better off overall test



See sections 211(4) and 186(2) of the [Fair Work Act 2009](#)

The *better off overall test* requires the Commission to be satisfied, as at the time the application for approval of the variation of the agreement was made, that each award covered employee, and each prospective award covered employee, would be better off overall under the agreement as proposed to be varied than under the relevant modern award.

Modern awards

3.1 List the modern award(s), if any, that currently cover the employer and any of the employees to whom the agreement as proposed to be varied will apply.



You should include the MA number for each award. This number can be found using the title search on the [find an award](#) search facility on the Commission’s website.

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement

Translating classifications

3.2 Are any of the employee classifications in the agreement altered by the variation?

Yes

No

If you answered **Yes** – For each modern award, use the following table to identify how the classifications in the agreement as proposed to be varied correspond to the classifications in the modern award.

Name of modern award:	
Classification in modern award	Corresponding classification in agreement as proposed to be varied

Attach additional tables if there is more than one modern award.

Improvements and reductions

3.3 Does the agreement as proposed to be varied contain any terms or conditions of employment that are more beneficial than under the agreement as it presently is?

Yes

No

If you answered **Yes** – Identify how the terms and conditions of the agreement as proposed to be varied are **more beneficial**. Include relevant clause numbers.

3.4 Does the agreement as proposed to be varied contain any terms or conditions of employment that are less beneficial than under the agreement as it presently is?

Yes

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement

No

If you answered **Yes** – Identify how the terms and conditions of the agreement as proposed to be varied are **less beneficial**. Include relevant clause numbers.

3.5 Does the agreement as proposed to be varied contain any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the modern award(s) listed in your answer to question 3.1?

Yes

No

If you answered **Yes** – List the terms and conditions of the agreement as proposed to be varied that are **more beneficial** than equivalent terms and conditions in the modern award(s). Your answer should indicate whether all or only some employees are affected and, if only some employees are affected, identify the groups of employees affected. Include relevant clause numbers.

3.6 Does the agreement as proposed to be varied confer any entitlements that are not conferred by the modern award(s) listed in your answer to question 3.1?

Yes

No

If you answered **Yes** – List the entitlements conferred by the agreement that are **not conferred** by the modern award(s). Your answer should indicate whether all or only some employees are affected and, if only some employees are affected, identify the groups of employees affected. Include relevant clause numbers.

3.7 Does the agreement as proposed to be varied contain any terms or conditions of employment that are less beneficial than equivalent terms and conditions in the modern award(s) listed in your answer to question 3.1?

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement

- Yes
- No

If you answered **Yes** – List the terms and conditions of the agreement as proposed to be varied that are **less beneficial** than equivalent terms and conditions in the modern award(s). Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected. Include relevant clause numbers.

3.8 Does the agreement as proposed to be varied omit any entitlements that are conferred by the modern award(s) listed in your answer to question 3.1?

- Yes
- No

If you answered **Yes** – List the entitlements conferred by the modern award(s) that are **omitted** by the agreement as proposed to be varied. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected. Include relevant clause numbers.

3.9 Does the agreement as proposed to be varied contain any terms or conditions of employment different to those under the modern award(s) listed in your answer to question 3.1, which you have not already identified in your answers to questions 3.5 to 3.8?

- Yes
- No

If you answered **Yes** – List these terms and conditions. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected. Include relevant clause numbers.

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement

Part 4 – Statistical information



This information is necessary for the Commission to assess whether the employer took all reasonable steps to ensure that the terms of the variation, and the effect of those terms, were explained to the affected employees and the explanation was provided in an appropriate manner taking into account the particular circumstances and needs of the relevant employees, for example:

- (a) employees from culturally and linguistically diverse backgrounds, and
- (b) young employees (s.180(5) and 180(6) of the [Fair Work Act 2009](#)).

In addition, this information is collected to enable the General Manager of the Fair Work Commission to comply with the statutory reporting obligations in s.653 of the [Fair Work Act 2009](#) and to be provided to the Attorney-General’s Department for inclusion in the Department’s Workplace Agreements Database.

4.1 What is the primary activity of the employer?



For example music retailer, plumbing contractor, steel fabricator, etc.

4.2 Tick the relevant boxes for the states and territories the agreement as proposed to be varied will be operating in:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania

FAIR WORK COMMISSION

Form F23A – Employer’s declaration in support of variation of an enterprise agreement

- Victoria
- Western Australia
- An external territory

4.3 Of the affected employees, how many employees are in the following demographic groups?

Demographic group	Number of 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	

Signature		Date:	
-----------	--	-------	--



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

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS