



## About the F34B declaration

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### Declaration in support of an application for a protected action ballot order

#### Who can use this form

This form (which is a declaration) forms part of an application for a protected action ballot order.

The *Fair Work Act 2009* allows you to use this form if:

- a Form F34 – Application for a protected action ballot order is being lodged with the Fair Work Commission (the Commission) **and**
- you are:
  - a bargaining representative of an employee who will be covered by a proposed single-enterprise agreement; or
  - two or more bargaining representatives acting jointly.

You cannot make an application for a protected action ballot order if the proposed enterprise agreement is a greenfields agreement or a cooperative workplaces agreement.

You cannot make an application more than 30 days before the nominal expiry date of any existing enterprise agreement (s.438 of the *Fair Work Act 2009* (Fair Work Act)).

#### About protected action ballots

Before industrial action can be lawfully taken, it must be authorised by a protected action ballot (s.409(2)).

The Commission will make a protected action ballot order after an application is made in accordance with the *Fair Work Act 2009* and it is satisfied that each applicant has been, and is, genuinely trying to reach an agreement with the employer of the employees who are to be balloted (s.443(1)).

An application that relates to a multi-enterprise agreement and employees of different employers will be treated as if it is multiple applications, one in relation to each employer (s.437A of the [Fair Work Act](#)).

#### Protected action ballot compulsory conciliation conferences

If the Commission makes a protected action ballot order, it must also make an order directing the bargaining representatives for the proposed agreement to attend a compulsory conciliation conference for mediation or conciliation on or before the date that voting in the protected action ballot closes (s.448A). All bargaining representatives for the proposed agreement will be required to attend the compulsory conciliation conference.

## Lodging and serving your completed documents

1. **Lodge** the following documents with the Commission no more than 30 days before the nominal expiry date of any existing agreement (s.438):
  - this declaration– if the proposed enterprise agreement is a multi-enterprise agreement, a declaration form in relation to each employer of the employees proposed to be balloted should be lodged; and
  - the application form ([Form F34](#)); and
  - a draft order in Word format (as required by Rule 31(1) of the Fair Work Commission Rules 2013)

You can lodge your application, draft order and declaration:

- by post; or
  - by fax; or
  - by email; or
  - in person at the [Commission office](#) in your state or territory.
2. **Within 24 hours** after it is lodged with the Commission, **serve a copy** of this declaration, the application and the draft order on:
    - the employer of the employees who are to be balloted, and
    - the protected action ballot agent specified in the application.

## Where to get help

### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- 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 answer the question following.

### Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or 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 an 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 a person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** – The person or business responding to an application made by an Applicant.

**Serve** – 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 for inclusion on the case file, and 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 F34B – Declaration in support of an application for a protected action ballot order

Fair Work Act 2009, s.437, Fair Work Commission Rules 2013, rule 31

This is a declaration in support of an application to the Fair Work Commission for an order for a protected action ballot in accordance with Part 3-3 of the [Fair Work Act 2009](#).

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



An application for a protected action ballot must not be made earlier than 30 days before the nominal expiry date of an existing enterprise agreement which covers the employees.

### 1.1 Is there an existing enterprise agreement(s) which covers the employees?

- Yes — Specify the name of the existing enterprise agreement(s). Go to question 1.2
- No — Go to question 1.3

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### 1.2 What is the nominal expiry date of the existing enterprise agreement?

If you have answered “Yes” to question 1.1 – specify the nominal expiry date of the existing enterprise agreement(s).

Expiry date	
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**1.3 Is the proposed agreement a greenfields agreement or a cooperative workplace agreement?**

Yes — An application for a protected action ballot for that agreement cannot be made [see s.437(2)].

No

**1.4 Are there any current suspension or termination orders, intractable bargaining declarations or serious breach declarations, in relation to the agreement?**

Yes – Specify the order print number, the date of the Commission’s decision and the name of the Commission Member who dealt with the matter.

No

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**1.5 Has bargaining for a proposed enterprise agreement commenced?**

Yes

No — Protected industrial action cannot be taken. An application for a protected action ballot must not be made before bargaining has commenced.

**1.6 What is the date of notification time for the proposed enterprise agreement?**

Notification time is either the date that the employer initiates or agrees to bargain or received a request to bargain under section 173(2A) of the [Fair Work Act 2009](#), or the date of a majority support determination, scope order, supported bargaining authorisation or single interest authorisation. An application for a protected action ballot order cannot be made unless there has been a notification time in relation to the proposed agreement. See section 437(2A) of the *Fair Work Act 2009*.

Specify the date of notification time for the proposed enterprise agreement.

Date and nature of the notification time	
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**1.7 Do you know whether the employer has issued a notice of employee representational rights?**

Yes

No

**1.8 If yes, do you know the date that the employer issued the notice of employee representational rights?**

Yes — Go to question 1.9

No — Go to question 2

Not applicable — Go to question 2

**1.9 If yes, what was the date?**

Date of notice	
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## 2. Genuinely trying to reach an agreement

### 2.1 Describe how you have been, and are, genuinely trying to reach agreement.

Using numbered paragraphs, set out the relevant facts which support the application and provide a description of the steps taken to try and reach an agreement with the Respondent(s).

Attach additional pages if necessary.



The Commission must be satisfied that you, and any other person making this application, have been, and are, genuinely trying to reach agreement with the Respondent(s).

## 3. Coverage of proposed enterprise agreement

### 3.1 Is there an unresolved dispute in the negotiations over the employees proposed to be covered by the proposed enterprise agreement?

Yes

No

**3.2 If yes, what is the nature of the dispute over the coverage of the proposed enterprise agreement?**

Specify your position in the dispute over coverage and specify the positioning of other bargaining representatives in the dispute over coverage

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Signature		Date:	
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PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS