



## About the F34D application form

### Declaration by a proposed protected action ballot agent who is not an eligible protected action ballot agent

#### Who can use this form

You should use this form if you are proposing to conduct a protected action ballot and you are not an eligible protected action ballot agent who has been approved by the Fair Work Commission (Commission).

#### About eligible protected ballot agents

Before industrial action can be lawfully taken by employees in relation to a proposed enterprise agreement, a protected action ballot must be conducted to determine whether the employees wish to engage in the industrial action.

A protected action ballot agent is the person or entity that conducts a protected action ballot. A protected action ballot agent must be an eligible protected ballot agent unless exceptional circumstances justify the ballot not being conducted by an eligible protected action ballot agent (s.444(1D) of the [Fair Work Act 2009](#) (the Fair Work Act)).

The Fair Work Act defines an **eligible protected action ballot agent** as either:

- the Australian Electoral Commission, or
- a person approved by the Commission under s.468A(2).

An applicant for a protected action ballot order can ask the Commission to appoint a protected action ballot agent who is not an **eligible protected action ballot agent**. The Commission can only appoint a person who is not an eligible protected action ballot agent to conduct a ballot if it is satisfied that there are exceptional circumstances that justify the ballot not being conducted by an eligible protected action ballot agent and:

- the person is a fit and proper person to conduct the protected action ballot (s.444(1D)(b)), and
- the requirements prescribed by the *Fair Work Regulations 2009* are met (s.444(1D)(c)).

#### What to include in the application

This form has 2 parts:

- **Part 1 – The proposed protected action ballot agent** which asks for the details of the person who is the proposed protected action ballot agent, and
- **Part 2 – Declarations** which includes two versions of a declaration by the proposed protected action ballot agent. If the proposed agent is an individual you should use the declaration at page 3. If the proposed agent is a corporation or industrial association you should complete the declaration on page 6.

When completing the required declaration, you should include details of your relevant experience and the systems you will use (both administrative and technical) that will enable you to conduct ballots in an appropriate manner.

## Lodging and serving your completed documents

You can **lodge** your application and the declaration:

- by post; or
- by fax; or
- by email; or
- in person at the [Commission office](#) in your state or territory.

## 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 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 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.

**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 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 F34D – Declaration by a proposed protected action ballot agent who is not an eligible protected action ballot agent

*Fair Work Act 2009, s.444(1D), Fair Work Commission Rules 2013*

This is a declaration by a person proposed to conduct a protected action ballot who is not an eligible protected action ballot agent in accordance with Part 3-3 of the [Fair Work Act 2009](#).

### Part 1 – The proposed protected action ballot agent



These are the details of the person who is proposed to conduct a protected action ballot.

Legal name of proposed protected action ballot agent (if an individual give full first name, middle name(s) and surname)			
ACN (if a company)			
Trading name or registered business name (if applicable)			
ABN (if applicable)			
Contact person (if applicable)			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

#### Does the proposed protected action ballot agent need an interpreter?



If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

Yes – Specify language

No

**Does the proposed protected action ballot agent require any special assistance at the hearing or conference (eg a hearing loop)?**

Yes – Please specify the assistance required

No

**Does the proposed protected action ballot agent have a representative?**

A representative is a person or organisation who is representing the Applicant. There is no requirement to have a representative.

Yes – Provide representative’s details below

No

**The proposed protected action ballot agent’s representative**



This is the person or organisation that is representing the **proposed protected action ballot agent** (if any).

Name of person			
Firm, organisation, company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

**Is the representative a lawyer or paid agent?**

Yes

No

**The protected action ballot application**

**Who is the Applicant for the protected action ballot order?**

These are the details of the bargaining representative who has applied for the protected action ballot order.

## Part 2 – Declaration by a proposed protected action ballot agent (individual) who is not an eligible protected action ballot agent

This declaration should be used if the proposed protected action ballot agent is an individual. Complete each part of the declaration below.


**Giving false or misleading information is a serious offence.**

A person who:

- knowingly or recklessly makes a false or misleading statement in an application for approval as an eligible protected action ballot agent; or
- knowingly gives false or misleading information in an application for approval as an eligible protected action ballot agent

is guilty of an offence, the punishment for which is imprisonment for up to 12 months if the statement is made or information is provided knowingly, or up to 6 months if the statement is made recklessly – see Part 7.4, s.136.1 and s.137.1 of the *Criminal Code*.

This is a declaration by a person proposed to conduct a protected action ballot pursuant to section 444(1D) of the *Fair Work Act 2009*.

 This must be the **full legal name** of the **proposed protected action ballot agent**. This must also match the name given in part 1 of the application.

I,

<b>Legal first name</b> (eg Robert not Rob)	
<b>Middle name(s)</b>	
<b>Surname</b>	

**Declare that each answer I give at paragraphs (a) to (f) below and the reasons I give for the answer are true and correct:**

**(a)** Are you a fit and proper person to conduct the proposed protected action ballot for the purposes of s.444(1D) of the Fair Work Act?

[ ] Yes

[ ] No

The reasons for my answer are:

**(b)** Can you ensure the secrecy and security of votes cast in the protected action ballot?

Yes

No

The reasons for my answer are:

**(c)** Can you ensure that the protected action ballot will be fair and democratic?

Yes

No

The reasons for my answer are:

**(d)** Can you conduct the protected action ballot expeditiously?

Yes

No

The reasons for my answer are:

**(e)** Have you agreed to conduct the protected action ballot?

Yes

No

The reasons for my answer are:

**(f)** Are you bound to comply with the *Privacy Act 1988* in respect to the handling of information relating to the protected action ballot?

Yes

No

The reasons for my answer are:

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**Sign the declaration**

<b>Signature</b>		<b>Date</b>	
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## Declaration by an officer of the person (corporation or industrial association) proposed as a protected action ballot agent

This declaration should be completed if the proposed protected action ballot agent is a corporation or an industrial association. Complete each part of the declaration below.

### Giving false or misleading information is a serious offence.

A person who:

- knowingly or recklessly makes a false or misleading statement in an application for approval as an eligible protected action ballot agent; or
- knowingly gives false or misleading information in an application for approval as an eligible protected action ballot agent

is guilty of an offence, the punishment for which is imprisonment for up to 12 months if the statement is made or information is provided knowingly, or up to 6 months if the statement is made recklessly – see Part 7.4, s.136.1 and s.137.1 of the *Criminal Code*.

This is a declaration by an officer or employee of the person proposed to conduct a protected action ballot pursuant to section 444(1D) of the *Fair Work Act 2009*.



This must be your **full legal name**.

I,

<b>Legal first name</b> (eg Robert not Rob)	
<b>Middle name(s)</b>	
<b>Surname</b>	
<b>Office or position held</b>	

**I declare that each answer I give at paragraphs (a) to (h) below and the reasons I give for the answer are true and correct:**

**(a)** Who will carry out the functions of the proposed protected action ballot?

Identify the individuals by name and role, or describe the groups of individuals who will carry out the functions:

**(b)** Are each of the individuals or groups identified in paragraph (a) a fit and proper person to conduct the protected action ballot for the purposes of s.444(1D) of the Fair Work Act?

Yes

No

The reasons for my answer are:

**(c)** What steps will the proposed agent take to ensure that only fit and proper persons will be involved in conducting the protected action ballot?

**(d)** Can the proposed protected action ballot agent ensure the secrecy and security of votes cast in the protected action ballot?

Yes

No

The reasons for my answer are:

**(e)** Can the proposed protected action ballot agent ensure that the protected action ballot will be fair and democratic?

Yes

No

The reasons for my answer are:

**(f)** Can the proposed protected action ballot agent conduct the protected action ballot expeditiously?

Yes

No

The reasons for my answer are:

**(g)** Has the proposed protected action ballot agent agreed to conduct the protected action ballot?

Yes

No

The reasons for my answer are:

**(h)** Is the proposed protected action ballot agent bound to comply with the *Privacy Act 1988* in respect to the handling of information relating to the protected action ballot?

Yes

No

The reasons for my answer are:

**Sign the declaration**

<b>Signature</b>		<b>Date</b>	
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PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS