



About the F33 application form

Application for an intractable bargaining declaration

About intractable bargaining declarations

The Fair Work Commission (Commission) may make an intractable bargaining declaration under section 235 of the [Fair Work Act 2009](#) in relation to a proposed enterprise agreement.

After an intractable bargaining declaration has been made and the end of any post-declaration negotiation period specified in the declaration, the Commission must make an intractable bargaining workplace determination.

When to use this form

Use this form to make an application to the Commission under section 234 of the *Fair Work Act 2009* for an intractable bargaining declaration in relation to a proposed enterprise agreement.

You can make an application for an intractable bargaining declaration if:

- you are a bargaining representative for a proposed enterprise agreement (or are completing this form for a bargaining representative)
- the proposed agreement is not a greenfields agreement, and
- if the proposed agreement is a multi-enterprise agreement, a supported bargaining authorisation or single interest employer authorisation is in operation in relation to the agreement.

Lodging and serving your completed form

1. **Lodge** this application and any supporting documents with the Commission.

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.

2. **As soon as practicable** after lodging, **serve a copy** of all documents lodged with the Commission on each other bargaining representative for the proposed agreement.

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

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 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 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 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 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, express or registered post, or in person. Part 5 of Chapter 1 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 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 F33 – Application for an intractable bargaining declaration

The [Fair Work Act 2009](#), section 234

This is an application to the Fair Work Commission under section 234 of the [Fair Work Act 2009](#) for an intractable bargaining declaration.

The Applicant



These are the details of the person or organisation making the application.

Legal name of Applicant			
Applicant's ACN (if a company)			
Applicant's trading name or registered business name (if applicable)			
Applicant's ABN (if applicable)			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

What is the Applicant?

- An employer that will be covered by the proposed enterprise agreement
- An employee organisation that is a bargaining representative for the proposed enterprise agreement
- A bargaining representative appointed by an employer that will be covered by the proposed enterprise agreement
- A bargaining representative appointed by an employee who will be covered by the proposed enterprise agreement

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Do you 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

Do you require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes – Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or organisation that is representing the Applicant (if any).

Yes – Provide representative’s details below

No

Applicant’s representative



These are the details of the person or organisation that is representing the Applicant (if any).

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

Is the representative a lawyer or paid agent?

<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent
<input type="checkbox"/> No	

1. Preliminary

1.1 What industry is each employer that will be covered by the proposed enterprise agreement in?

1.2 What is the name of the proposed enterprise agreement this application relates to?



Write the name exactly as it appears in the title clause of the proposed agreement.

1.3 What kind of agreement is the proposed enterprise agreement?

- A single-enterprise agreement
- A multi-enterprise agreement

1.4 If the proposed enterprise agreement is a multi-enterprise agreement, is a supported bargaining authorisation or single interest employer authorisation in operation in relation to the agreement?



See section 234(2) of the [Fair Work Act 2009](#).

- Yes
- No

If you answered **Yes** – Provide information to identify the relevant authorisation including the date of the order and the print number (PR)

2. Other bargaining representatives for the proposed agreement



These are the details of all the other bargaining representatives for the proposed enterprise agreement (if any).

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2.1 Provide details of all the employers that are bargaining representatives for the proposed enterprise agreement.



If the Applicant is an employer, you do not need to provide the Applicant's details again.

Legal name of employer			
Employer's ACN (if a company)			
Employer's trading name or registered business name (if applicable)			
Employer's ABN			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

Attach additional pages if necessary.

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2.2 Provide details of all the employee organisations that are bargaining representatives for the proposed enterprise agreement (if any).



If the Applicant is an employee organisation, you do not need to provide the Applicant’s details again.

Name of employee organisation			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

Attach additional pages if necessary.

2.3 Did any of the employers appoint bargaining representatives?

- Yes
 No

If you answered **Yes** – Provide details of each employer bargaining representative:

Name of employer bargaining representative			
Employer represented by the bargaining representative			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

Attach additional pages if necessary

2.4 Did any of the employees who will be covered by the proposed agreement appoint bargaining representatives?

Yes

No

If you answered **Yes** – Provide details of each employee bargaining representative:



A work address and contact details (rather than a home address and private contact details) can be given for an employee bargaining representative who is an individual.

Do not include employees who participated in bargaining because they are representatives of an employee organisation that is a bargaining representative. Employee bargaining representatives are identified by their written instrument of appointment.

Legal name of employee bargaining representative			
ACN (if applicable)			
Trading name or registered business name (if applicable)			
ABN (if applicable)			
Contact person (if applicable)			
Relationship of bargaining representative to employer (if applicable)			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

Attach additional pages if necessary

3. Requirements for an intractable bargaining declaration

3.1 Has the Commission dealt with the dispute about the agreement under section 240 of the *Fair Work Act 2009*?

- Yes
 No

If you answered **Yes**—Provide further details including the Commission matter number, the dates of proceeding, the date of any orders made and any relevant print numbers (PR)

3.2. Did the Applicant participate in the Commission’s processes to deal with the dispute under section 240 of the *Fair Work Act 2009*?



See section 235(2)(a) of the Fair Work Act. The Commission must be satisfied the Applicant participated in the Commission’s processes to deal with the dispute about the agreement under section 240 of the Fair Work Act.

- Yes
 No

If you answered **Yes** – Outline how the Applicant participated in the Commission’s processes:

3.3 Has the minimum bargaining period ended?



See sections 235(5) and 235(6) of the [Fair Work Act 2009](#). The *end of the minimum bargaining period* is the later of the day that is:

- 9 months after the last nominal expiry date of any existing enterprise agreement that applies to any employees who will be covered by the proposed agreement (if any), and

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- 9 months after the day *bargaining starts* for the proposed agreement.

The day *bargaining starts* for the proposed agreement is:

- if a supported bargaining authorisation or single interest employer authorisation is in operation in relation to the proposed agreement—the day the authorisation first comes into operation, or
- otherwise—the *notification time* for the proposed agreement.

The *notification time* is defined in section 173(2) of the [Fair Work Act 2009](#).

Yes

No

If you answered **Yes** – Specify provide the date of the end of the minimum bargaining period and explain why that date is the end of the minimum bargaining period:

3.4 Explain why there is no reasonable prospect of agreement being reached if the Commission does not make the intractable bargaining declaration.



See section 235(2)(b) of the Fair Work Act. The Commission must be satisfied there is no reasonable prospect of agreement being reached if it does not make the declaration.

Provide details including an outline of any further attempts to bargain since the Commission dealt with the dispute about the agreement under section 240.

Attach additional pages, if necessary.

3.5 Explain why it is reasonable in all the circumstances for the Commission to make the intractable bargaining declaration.



See section 235(2)(c) of the Fair Work Act. The Commission must be satisfied it is reasonable in all the circumstances to make the declaration, taking into account the views of all the bargaining representatives for the agreement.

For example you might want to provide details of discussions or correspondence showing the views of other bargaining representatives for the agreement.

Attach additional pages, if necessary.

4. Post-declaration negotiating period

4.1 Does the Applicant propose that the Commission specify a post-declaration negotiating period in the intractable bargaining declaration?



See section 235A of the Fair Work Act. The Commission may specify a post-declaration negotiation period in an intractable bargaining declaration.

Yes

No

If you answered **Yes**—Provide details of the proposed post-declaration negotiation period and why the Applicant proposes it:

Authority to sign and signature



For 'Authority to sign':

- If you are a bargaining representative for the proposed enterprise agreement—insert 'Applicant'
- If you are the Applicant's representative and have provided your details in this form—insert 'Representative'.

Authority to sign	
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	
Name	
Date	

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS