Fair Work Commission

About the F34C application form

Application for approval as an eligible protected action ballot agent

Who can use this form

You should use this form if you want to make an application for the Fair Work Commission (Commission) for approval as an eligible protected action ballot agent.

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 (section 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 section 468A(2).

The Commission can only approve a person as an eligible protected action ballot agent under section 468A(2) if it is satisfied that:

- the person is a fit and proper person to be an eligible protected action ballot agent, and
- the requirements prescribed by the Fair Work Regulations 2009 are met.

At least every 3 years after the Commission approves a person as an eligible protected action ballot agent, the Commission must consider whether it remains satisfied the person meets the approval requirements.

What to include in the application

This form has 2 parts:

- **Part 1 – The Applicant** which asks for the details of the person who wishes to be approved as an eligible protected action ballot agent, and
- **Part 2 – Declarations** which includes two versions of a declaration by the proposed eligible protected action ballot agent. If the Applicant is an individual, you should use the declaration at page 3. If the Applicant is a corporation or industrial association, you should complete the declaration on page 5.

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 your completed documents

You can **lodge** your application and the declaration by email, post 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 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.

The Commission will publish a list of approved eligible protected ballot agents on our public website. If your application is approved, your name and the Commission decision approving your application will appear on the published list. Decisions made about the non-approval of your application may also be published.

The Commission will also publish on our website a list of applications that have been made for the approval of eligible protected ballot agents.

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

Form F34C – Application for approval as an eligible protected action ballot agent

Fair Work Act 2009, section 468A

This is an application to the Fair Work Commission for approval of a person as an eligible protected action ballot agent in accordance with Part 3-3 of the Fair Work Act 2009.

Part 1 – The Applicant

These are the details of the person who is applying to be approved as an eligible protected action ballot agent.

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			
Email address			

Does the Applicant 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 in your language on our website.

☐ Yes – Specify language

☐ No

Does the Applicant require any special assistance at the hearing or conference (for example a hearing loop)?

☐ Yes – Please specify the assistance required

☐ No

Does the Applicant 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 Applicant's representative

This is 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?

☐ Yes — please select:	☐ Lawyer ☐ Paid agent
☐ No	

Part 2 – Declaration by the person (an individual) applying for approval as an eligible protected action ballot agent

This declaration should be used if the proposed eligible 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, section 136.1 and section 137.1 of the *Criminal Code*.

This is a declaration by a person applying to the Fair Work Commission under section 468A of the *Fair Work Act 2009* for approval as an eligible protected action ballot agent.

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,

Legal first name (eg Robert not Rob)	
Middle name(s)	
Surname	

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

(a) Are you a fit and proper person to be an eligible protected action ballot agent for the purposes of section 468A 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 any protected action ballot?

☐ Yes

☐ No

The reasons for my answer are:

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

☐ Yes

☐ No

The reasons for my answer are:

(d) Can you conduct any protected action ballot expeditiously?

☐ Yes

☐ No

The reasons for my answer are:

Sign the declaration

Signature		Date	

Declaration by an officer of the person (corporation or industrial association) applying for approval as an eligible protected action ballot agent

This declaration should be completed if the proposed eligible 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, section 136.1 and section 137.1 of the *Criminal Code*.

This is a declaration by an officer or employee of the person proposed in an application to the Fair Work Commission under section 468A of the *Fair Work Act 2009* for approval as an eligible protected action ballot agent.

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

I,

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

I 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) Who will carry out the functions of the proposed eligible protected action ballot agent if the application is approved?

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

(b) Are each of the individuals or groups identified in paragraph (a) a fit and proper person to be an eligible protected action ballot agent for the purposes of section 468A of the Fair Work Act?

☐ Yes

☐ No

The reasons for my answer are:

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

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

☐ Yes

☐ No

The reasons for my answer are:

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

☐ Yes

☐ No

The reasons for my answer are:

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

☐ Yes

☐ No

The reasons for my answer are:

Sign the declaration

Signature		**Date**	

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

Consent to contact by researchers

The Fair Work Commission undertakes research with participants in bargaining matters to ensure a high quality process. Some research may be undertaken by external providers on behalf of the Fair Work Commission.

Do you consent to the contact details provided on page 1 of this form being provided to an external provider of research services for the sole purpose of inviting you to participate in this research?

☐ Yes

☐ No