



A (VERY BRIEF) GUIDE TO PROTECTED ACTION

IT'S TIME TO HAVE YOUR SAY

OVERVIEW

- What is protected action?
- What can it look like?
- What's the process for getting access to protected action?



WHAT IS INDUSTRIAL ACTION?

- Defined in s19 of the Fair Work Act 2009. For workers, it means:
- “The performance of work by an employee in a manner different from that in which it is customarily performed, or the adoption of a practice which results in:
 - a restriction, or limitation on, or
 - a delay in;
the performance of work
- a ban, limitation or restriction on the performance of work by an employee or on the acceptance of or offering for work by an employee
- a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees who attend for work



EXAMPLES OF INDUSTRIAL ACTION

- Strikes/walk-offs of any length
- Wearing of campaign clothing (badges or t-shirts with union slogans, etc.)
- Placing of material on vehicles
- Changing your email signature to indicate you're taking industrial action
- Changing your pattern of work (refusal of after-hours work, meetings, events, strict compliance with your JDF – also known as “work to rule”)



WHEN IS INDUSTRIAL ACTION “PROTECTED?”

- Taking unprotected industrial action is unlawful, and can mean penalties for you and/or the IEU.
- For worker industrial action to be protected, it must be:
 - In support of claims relating to a proposed enterprise agreement;
 - With genuine attempts by the workers to try and reach a genuine agreement;
 - Be organised by the bargaining representative for employees who will be covered by that agreement (your union);
 - Authorised by a protected action ballot.



Application for protected action ballot order made by bargaining representative:

- Cannot be made earlier than 30 days before nominal expiry date of enterprise agreement
- There must have been a notification time in relation to the proposed enterprise agreement

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Within 24 hours of making application applicant must give copy of application to employer

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Commission must, as far as practicable, determine application within 2 working days

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Protected action ballot order made by Commission

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Protected action ballot conducted by Australian Electoral Commission or other specified ballot agent

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Vote by employees included on roll of voters

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**Protected action ballot agent must declare and inform about result
(Commission must publish result on website)**

APPLYING FOR A PROTECTED ACTION BALLOT ORDER (PABO)

- Your union would apply to the Fair Work Commission to approve a protected action ballot to be run.
- That application would indicate:
 - Which employees are to be balloted (IEU members eligible to be covered by the proposed Agreement)
 - What the ballot questions will be (what kinds of protected action we will poll IEU members to approve of taking);
 - Who will run the ballot (either the Australian Electoral Commission or a dedicated industrial ballot company);
 - On what date we propose the vote will close.
- We would need to provide your employers a copy of the application within 24 hours of lodging it with the Commission.
- The Commission would seek to determine the application within two working days of it being made.
- If approved, the Commission issues a Protected Action Ballot Order (PABO).



NOW SEEMS IMPORTANT TO MENTION...

- Only IEU members set to be covered by the proposed Agreement would be able to vote on the decision to take protected action.
- If protected action is approved, only IEU members set to be covered by the proposed Agreement would be allowed to take protected action.
- If your colleagues want to have a say on the decision to take action, or want to have the right to take action, **they need to join you in the IEU.**
- **If they are not in the IEU, they are on their own!**

THE VOTING PROCESS

- After the PABO is issued, the ballot agent would assemble a roll of eligible voters using:
 - A list provided by your employer of employees that may be eligible (i.e.: list of teaching staff); and
 - A list provided by the IEU of members that may be eligible to participate.
- Names can be added or removed from the roll in the leadup to the vote (for example, if someone joins the IEU).
- Vote would be conducted how ballot agent sees fit, but usually electronic, much like the EBA votes.
- During the voting process, the IEU and the employers would be required to attend a conciliation process with the Fair Work Commission to try and resolve the dispute (neither party are required to agree to anything!)



EXAMPLES OF BALLOT QUESTIONS

In support of reaching an Enterprise Agreement with your employer, do you authorise protected industrial action against your Employer, separately, concurrently and/or consecutively, in the form of:

	Question	Yes	No	Informal
1	An unlimited number of bans or limitations on answering or making telephone calls, responding to voicemails, or sending or responding to emails or any other form of electronic communications (other than for student's wellbeing, or an emergency)?	17	5	0
2	Indefinite or periodic industrial action in the form of a typed statement at the footer of each email. "The following message is authorised protected industrial action under the Fair Work Act 2009: I am taking protected industrial action for fair pay and a fair deal for all Mount Scopus Memorial College workers"?	15	7	0
3	An unlimited number of stoppages of work for the duration of one (1) hour?	14	8	0
4	An unlimited number of stoppages of work for the duration of two (2) hours?	13	9	0
5	An unlimited number of stoppages of work for the duration of four (4) hours?	11	11	0
6	An unlimited number of stoppages of work for the duration of twenty-four (24) hours?	10	12	0
7	An unlimited number of stoppages or interruptions of work for 30 minutes to distribute information to students, parents and others about the action and bargaining?	10	12	0
8	An unlimited number of stoppages or interruptions of work for 10 minutes to prepare to wear campaign material and/or badges?	11	11	0
9	An unlimited number of bans on attending meetings before the commencement of classes?	17	5	0
10	An unlimited number of bans on attending meetings after the conclusion of classes?	17	5	0
11	Indefinite or periodic bans on performing work after hours, or attendance at after hour events?	16	6	0



WHEN IS PROTECTED ACTION APPROVED?

- An action is approved if more than 50% of the eligible voters participate in the vote, AND...
- More than 50% of the participating voters vote in favour of the action.
 - Example: 1000 IEU members on the roll? Over 500 would need to vote, and over half of that 500 would need to vote in favour of the action.
- Approval is on a question-by-question basis; not every question needs to be voted up.
- Only proposed actions that were voted up can be taken as protected action.



WHAT HAPPENS IF WE WIN A BALLOT?

- The action is only protected if taken within 30 days of the vote to approve of that action (although it is possible to ask the Commission for an extension).
- We're not **REQUIRED** to take protected action that has been voted up. It just means that if we take it, it will be protected.
- This is why voting **every** question up is useful: it gives you and your union more options!
- However, we must inform your employer within 120 hours of any intention to take that protected action.

