



Explaining Industrial Action

A guide for Express Freighters Australia Pty Ltd
AFAP, AIPA and TWU union members

Version: June 2025

Explaining Industrial Action

A joint statement from the AFAP, AIPA and the TWU for the 2025 Express Freighters Australia Pty Ltd Enterprise Agreement Negotiations



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Section 1: General

Dear members,

With the latter months of 2024 spent attempting to get the company to commence bargaining and 2025 so far spent on negotiations, it has become clear to both the Pilot Representatives and unions that the parties' positions are a long way apart.

In January 2025, we provided the company with our Statement of Claims. This document laid out the issues you, our members, had brought to us. The company expressed concerns about the number of claims repeatedly, but did not put forward a proposal adequately addressing members' core issues, such as hours of work and remuneration.

The Pilot Representative and unions continued to press that since the first Enterprise Agreement in 2009, the agreement has not seen any reasonable improvements. The remuneration gap between other airlines remains large despite a significant increase in productivity. Hours of work and general employment conditions have remained unchanged since 2009.

We have listened to you and understand that enough is enough. The Pilot Representatives and unions have now taken the first steps in commencing Protected Industrial Action (PIA). This guide has been prepared by your Pilot Representatives and endorsed by AFAP, AIPA and TWU. It is intended to serve three key purposes:

- To introduce the legal and operational concept of industrial action, specifically Protected Industrial Action (PIA) within the Australian aviation context;
- To provide a clear explanation of the rules, risks, and strategic considerations surrounding industrial action; and
- To outline and explain the proposed industrial action plan being developed for Express Freighters Australia members.

The Pilot Representatives and unions understand that commencing PIA can be confronting and stressful for some members. The Pilot Representatives understand that for some members, certain elements of PIA may seem unnecessary. This may be particularly true for those employees who have had favourable working hours in the past few months (e.g., during training or when fleet numbers were reduced due to maintenance). Your Pilot Representatives want to reiterate that many of us have experienced high workload periods over the past few months without sufficient compensation or protections regarding hours of work. This first round of PIA is aimed at securing a better deal for all of us and restoring our work-life balance.

To make this PIA journey as effective as possible, we need:

- **Strong participation** by a high percentage of members;
- To ensure actions are strategically chosen to apply maximum pressure with minimal risk;
- To ensure the unions and employees are operating within the legal framework;
- There is clear **unity and coordination across the pilot group**; and

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- We choose actions which the company is not fully prepared for to maximise the impact of each action.

PIA can become ineffective when:

- **Participation is low**, sending a weak signal to the company;
- The action is unclear or difficult to implement by members;
- The Fair Work Commission issues stop orders due to procedural or other faults;
- The action fails to materially impact the employer's operations;
- The element of surprise is lost, allowing the employer to plan countermeasures; and
- There is division or confusion among the workforce.

Members and non-members are reminded that once approved, only union members of the participating Union may undertake PIA and only in accordance with the relevant Union's Protected Action Ballot as approved by that Union's members. Section 2 details the process required before PIA can commence. It also outlines the differences between protected and unprotected industrial action.

We thank all members for their continued support, engagement, and confidence during this process. **Your unity and resolve remain the most powerful tools we have in achieving a fair and modern agreement that reflects the true value of the work you do.**

We are proud to uphold the safety, reliability and professionalism that underpins the 'Spirit of Australia'. These actions are not taken lightly but are driven by a deep commitment to ensuring the long-term wellbeing of the workforce that supports that spirit every day.

In unity,

AFAP, AIPA and TWU Pilot Representatives

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Section 2: The Rules

What is Industrial Action?

Section 19 of the Fair Work Act 2009 defines what is and isn't industrial action, as well as what a lock out is. This has been reproduced in this section with areas of particular relevance highlighted:

- 1) *“Industrial action means action of any of the following kinds:*
 - a) ***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 in relation to work by an employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;***
 - b) ***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;***
 - c) ***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;***
 - d) ***the lockout of employees from their employment by the employer of the employees.***
- 2) *However, industrial action **does not** include the following:*
 - a) *action by employees that is authorised or agreed to by the employer of the employees;*
 - b) *action by an employer that is authorised or agreed to by, or on behalf of, employees of the employer;*
 - c) ***action by an employee if:***
 - i) ***the action was based on a reasonable concern of the employee about an imminent risk to his or her health or safety; and***
 - ii) ***the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.***
- 3) ***An employer locks out employees from their employment if the employer prevents the employees from performing work under their contracts of employment without terminating those contracts.”***

Annex 3 contains the Fair Work Ombudsman Industrial Action fact sheet.

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What is the Difference Between ‘Protected’ and ‘Unprotected’ Industrial Action?

Protected Industrial Action (PIA) is lawful action taken by employees during an authorised bargaining period, and it must be:

- Organised during bargaining for a new enterprise agreement;
- Authorised by the Fair Work Commission via a Protected Action Ballot Order (PABO);
- Approved by a majority of members in the protected action ballot;
- Accompanied by a minimum notice, usually 72 hours to the employer; and
- Undertaken in compliance with the Fair Work Act 2009.

When conducted lawfully, **PIA provides legal protection** from prosecution or civil action.

Unprotected industrial action (known as ‘industrial action that is not protected’) is when employees or employers take actions such as strikes or work stoppages **without** following the legal steps under the Fair Work Act 2009. **Unprotected industrial action is unlawful and can result in penalties for both individual employees and Unions.**

Examples of unprotected industrial action include:

- Members refusing to perform certain duties or stopping work without following the legal process;
- Action taken before or after the bargaining period;
- Action taken contrary to FWC orders;
- Taking industrial action without giving the required notice to the employer; and
- Sudden, unapproved strikes not authorised by a union or vote.

Members are strongly reminded that any acts of unprotected industrial action can jeopardise our negotiations with the company and will be viewed poorly by the Fair Work Commission. They will also likely result in significant penalties for individual employees and Union(s).

Contraventions can result in penalties of up to \$19,800 per breach for an individual and \$99,000 per breach for a company.

Annex 1 details the likely consequences for protected industrial action, while **Annex 3** contains the Fair Work Ombudsman Industrial Action fact sheet.

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What is the process to take Protected Industrial Action at EFA?

To undertake Protected Industrial Action (PIA) by any member employed at EFA, the following steps must be followed:

| Status | Step |
|----------|--|
| Complete | Pilot Representatives and all three unions agree on the PIA plan, proposed PIA ballot questions and educational material. |
| Complete | Distribute the proposed PIA information to members (i.e. this document). |
| Complete | Submit the Protected Action Ballot Order (PABO) application to the Fair Work Commission and proposed PIA ballot questions. |
| Pending | FWC mandated mediation with the company. |
| Pending | Members vote via a secret ballot on specific industrial actions. |
| Pending | If successful, at least 72 hours' notice is issued to the company of the taking of the PIA. |
| Pending | Protected Industrial Action commences in accordance with the ballot outcome. |

Failure to follow the above steps will result in any action being considered **unprotected**.

Protected Industrial Action concludes when either:

- The unions and the employer reach an agreement that is accepted by members, or
- The Fair Work Commission intervenes to suspend or terminate the action due to public interest, serious harm, or upon application by a party.

Once an agreement is reached regarding a proposed new enterprise agreement, a vote is conducted among employees to approve the new Enterprise Agreement before it is lodged with the Fair Work Commission for approval.

Remuneration and Protected Industrial Action

While conducting PIA, the employer must not pay the employee for the period of industrial action. Certain rules apply for overtime bans. Where there is a stoppage of work, the employer must not pay the employees involved. Where the stoppage is for less than 4 hours, the employer must deduct a minimum of 4 hours of pay. It is unlawful for an employer to pay an employee or for an employee to request payment for these periods.

For partial work bans, proportional payment rules apply whereby the employer may give notice to the employee of the reduction of pay. The employer may also give notice that no payments will be made and will not accept any work from the employee until they resume normal work duties.

Annex 3 contains the Fair Work Ombudsman Industrial Action fact sheet, which details payment and industrial action.

The following website address details of payments relating to partial work bans:

<https://www.fwc.gov.au/partial-work-bans>

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Section 3: Our Journey

Why are the unions proposing Protected Industrial Action?

Negotiations with EFA started in mid-January, with the Pilot Representatives providing a joint Statement of Claims to the company. Since then, several meetings have been held with the company. These meetings have primarily focused on:

- The company provided an update on the business and background information as well as the frequency of meetings (16th January);
- The unions guide the company through the joint Statement of Claims (5th February, 26th February and 18th March);
- The company's initial response to the joint Statement of Claims (1st April);
- The unions' response to the company (29th April);
- A union proposal of the essential claims provided to the company (14th of May); and
- Proposed outlining of a future agreement by the company (4th of June).

Following the most recent meeting held with the company on 4th June, it became apparent that the company is unwilling to make any meaningful progress towards reaching an agreement that would be acceptable to members. Because of this and considering the time elapsed since the unions approached the company to commence bargaining, the Pilot Representatives and the unions believe now is an appropriate time to commence Protected Industrial Action.

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Our proposed PIA

| Phase 1 | | | |
|---|---|--|--|
| Element | Advancing Claim | Detail | Explanation |
| Not working on specific days (Ballot question 1) | Claim 3.2: AX days and clearing Claim 3.14: Working on a day off Claim 4.3: Day off payment | Members may refuse to work on a: <ul style="list-style-type: none"> rostered days off; non-work days for part time employees annual leave days; and long service leave days | Members may refuse to accept an offer from the company to work on these days, even when offered a day off payment. Members refusing to work on specific days is intended to: <ul style="list-style-type: none"> Send a clear message to the company that pre-emptive scheduling is an important element of roster stability; Accepting day off payment, in some instances, leads to further roster changes. This affects other members and their families and the overall work-life balance within the company, and Disrupting the company's bias that members can be the 'stop gap' between insufficient pattern planning and chaotic scheduling. |
| No FDP extensions or additional sectors that pass home base (Ballot question 3 & 4) | Claim 3.5: Variation to published roster Claim 3.19: Mid-duty disruptions | Members may refuse to: <ul style="list-style-type: none"> Extend an FDP; and Any additional sectors that pass through a home base once an FDP commences. | Members may refuse extensions or additional sectors past their home base once the Flight Duty Period (FDP) begins. This is aimed at highlighting the importance of adequate rostering resilience and roster stability. |
| Contactability (Phase 1) (Ballot question 5) | Claim 2.5: Contactability | Members may refuse any form of communication on: <ul style="list-style-type: none"> Days off; Leave (e.g. personal, long service, annual, etc.); Cleared AX days; and Rest period (12 hours from signoff). | Members may disconnect from any form of communication with the company, including phone calls, e-mails, and text messages, during the prescribed periods. This is aimed at highlighting the importance of work-life balance and challenging the 'always on call' mentality promoted by the company. |

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| Phase 2 | | | |
|--|---------------------------|--|--|
| Element | Advancing Claim | Detail | Explanation |
| All elements in Phase 1 | N/A | Members may continue all items in Phase 1. | |
| Business duty travel (Ballot question 6) | Claim 2.14: Duty travel | <p>Members may refuse any duty that involves deadheading in an onload class other than business or higher. This includes:</p> <ul style="list-style-type: none"> • Duty travel ticket at the start of a duty; • Duty travel ticket mid-duty; and • Duty travel ticket at the end of a duty. <p>Members may also refuse to board if the seat is made available at the last minute by offloading a passenger.</p> <p>This does not include any Alternate Pax (alt pax).</p> | <p>Members may advise crewing at the first instance that they will not be deadheading in economy or premium economy for any duty. Should members receive an economy or premium economy duty travel ticket, they should advise crewing that they will not travel. Should the company make a business class or higher-class seat available by offloading a passenger, the member may also refuse to board.</p> <p>This advances our claim regarding the importance of comfortable travel for members and attempting to provide rest before, during and after a duty. This is particularly important given the significant increase in duty travel sectors over the previous years.</p> |
| Contactability (Phase 2) (Ballot question 5) | Claim 2.5: Contactability | <p>Members may refuse any form of communication while on:</p> <ul style="list-style-type: none"> • Days off; • Leave (e.g. personal, long service, annual, etc.); • Cleared AX day; • Rest period (12 hours from signoff); • Preparation period (12 hours from last accepted signon on Webcis/crewing call); • A blank day, being any day when a duty has concluded. | <p>Members may disconnect from any form of communication with the company, including phone calls, e-mails, and text messages. The two additional scenarios are the preparation period (12 hours from the last accepted sign-on on Webcis/crewing call) and a blank day, being any day when a duty has concluded.</p> <p>This is aimed at highlighting the importance of work-life balance and challenging the 'always on call' mentality encouraged by the company.</p> |

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| Phase 2 | | | |
|--|---|--|---|
| Element | Advancing Claim | Detail | Explanation |
| Reserve callout (Ballot question 7) | Claim 3.12: Reserve duties and callout time | Members may report 120 minutes following a reserve callout. | <p>Members may advise crewing that they will not report for duty for 120 minutes from the callout time when called out during a reserve.</p> <p>This advances our claim regarding reserve callout times. The 120-minute report time is in line with the Air Pilot Award and other Qantas Group agreements.</p> |
| No delay to signon within 24 hours (Ballot question 8) | Claim: 3.5: Variation to published roster | Members may refuse any delay to the published signon if the new sign on time falls within 24 hours of the originally scheduled signon. | <p>Members when receiving notice that their duty scheduled to commence within 24 hours is being delayed, may advise crewing that they will plan all Flight and Duty limits on the original scheduled time.</p> <p>This advances our claim on variation to the published roster.</p> |
| Strict signon (Ballot question 9) | Claim 3.9: Signon and signoff provisions | Members may adhere strictly to signon at the published signon time. | <p>Members may not commence any duty before the scheduled signon time. This can apply to all duties, such as operating flights, paxing (deadheading) flights, simulator sessions and other classroom or ground activities. For clarity, the signon point is deemed as:</p> <ul style="list-style-type: none"> • Operating: in the briefing room or equivalent, ready to commence flight planning; • Deadheading (paxing): commencing at check-in in the departures hall; • Simulator duties: reporting to the instructor; and • Classroom/ground duties: reporting to the instructor or designated place. <p>Note: for deadheading (paxing), members are encouraged not to check in via the Qantas App, but rather via check-in staff or kiosk.</p> <p>This advances our claim regarding adequate signon and sign-off times. It is aimed at ensuring adequate signon provisions for the work expected to be accomplished.</p> |

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| Phase 3 | | | |
|--|---|---|---|
| Element | Advancing Claim | Detail | Explanation |
| All elements in Phases 1 and 2 | N/A | Members may continue all items in Phase 1 and 2. | |
| Refusing aircraft defects (Ballot question 10) | N/A | Members may refuse to fly any aircraft with either a MEL or CDL applied. | Members may not commence a duty from their home base should the aircraft have an MEL or CDL applied. If a MEL or CDL has been applied, the Pilot in Command is encouraged to advise Qantas IOC that they will not be taking the aircraft with an MEL or CDL applied. Should members wish to refuse an aircraft with an MEL or CDL at any out-port, they may do so at their discretion. The element is aimed at applying pressure on the company to reach an agreement. |
| AX day (Ballot question 2) | Claim 3.2: AX days and clearing | Members may refuse to be contactable on an AX. | Members may not be contactable on an AX day, regardless of whether it has been cleared or not. Members may stop clearing AX days. This advances our claim regarding AX days and clearing. |
| No change to signon time within 48 hours (Ballot question 8) | Claim: 3.5: Variation to published roster | This element of PIA allows members to refuse delayed sign on within 48 hours of their previous rostered signon. | When receiving notice that their duty scheduled to commence within 48 hours is being delayed, members may advise crewing that they will plan all Flight and Duty limits on the original scheduled time. This advances our claim on variation to the published roster. |

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| Phase 4: Major Active Protected Industrial Action | | | |
|---|-----------------|---|---|
| Element | Advancing Claim | Detail | Explanation |
| All elements in Phases 1, 2 and 3 | N/A | Members may continue all items in Phase 1,2 and 3. | |
| Stop work (Ballot question 11) | None | Allows members to stop work. The unions will organise this element, and members will be advised of the proposed date, time, and duration. | The element is aimed at applying pressure on the company to reach an agreement. |

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Section 4: Annex

Annex 1: Consequences that could occur with protected industrial action

The following table is designed to provide an overview of the consequences that could occur should members conduct protected industrial action. These consequences are not exhaustive but indicate the likely outcomes.

| Consequence | Explanation | Fair Work Act |
|--|--|---|
| Employees are not paid for the duration of the action | Employers must not pay employees for the time they engage in protected industrial action. Where it is a partial work ban only (as opposed to a complete stoppage of work), proportionate pay may only be paid. | Section 470: Employers must not pay employees during protected action. (It is also unlawful for an employee to request payment). |
| Employer can respond with a lockout | Employers may take their own protected industrial action, such as a lockout, in response to protected action by employees. | Section 411 & Section 470: Employers can take lawful action, such as a lockout. In these circumstances, there will be no payment. |
| Legal protection from penalties or dismissal | Employees cannot be fined, dismissed, or discriminated against for participating in protected industrial action. | Section 415: Employees cannot be dismissed or penalised for protected action. |
| Fair Work Commission (FWC) may order action to stop if it causes harm | If the industrial action threatens public safety, the economy, or causes significant damage, the FWC can order it to stop. | Section 424: FWC can suspend or terminate protected action if it causes serious harm. |
| Employees retain job security and entitlements | Employees remain employed and retain all benefits, but may not earn wages during the action. | Section 415: Employees engaging in protected action cannot lose entitlements. |

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Annex 2: Extract of questions from s.427 Application for protected action ballot order

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

1) *An unlimited number of indefinite or periodic bans on working on any of the following days (as scheduled in the initially published roster):*

1. *rostered days off;*
2. *non-work days for part time employees*
3. *annual leave days; and*
4. *long service leave days*

Yes ☐ No ☐

2) *An unlimited number of indefinite or periodic bans on working on any of the following days (as scheduled in the initially published roster):*

1. *any day with no duty or reserve duty assigned; and*
2. *AX days*

Yes ☐ No ☐

3) *An unlimited number of indefinite or periodic bans on accepting or performing any extensions to rostered duty periods where such roster changes are notified at or before sign on?*

Yes ☐ No ☐

4) *An unlimited number of indefinite or periodic bans on accepting or performing additional sectors that pass through the pilot's home base?*

Yes ☐ No ☐

5) *An unlimited number of indefinite or periodic bans on being contactable by the company unless on a rostered duty or during a reserve period, including:*

1. *answering any phone calls;*
2. *acknowledging text messages;*
3. *acknowledging updates to the rostering system;*
4. *e-mails; and*
5. *any other form of communication?*

(Note: AX days, cleared, uncleared or however so described, are not deemed a rostered duty or a reserve period).

Yes ☐ No ☐

6) *An unlimited number of indefinite or periodic bans on any duty travel other than a business class (J) seat?*

Yes ☐ No ☐

7) *An unlimited number of indefinite or periodic bans on signing on earlier than 120 minutes after being called in off any reserve period?*

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Yes ☐ No ☐

8) *An unlimited number of indefinite or periodic bans on accepting a change of sign-on?*

Yes ☐ No ☐

9) *An unlimited number of indefinite or periodic bans on reporting and/or conducting work duties prior to the scheduled sign-on time for a duty?*

Yes ☐ No ☐

10) *An unlimited number of indefinite or periodic bans on departing any port with an aircraft with an MEL or CDL applied?*

Yes ☐ No ☐

11) *An unlimited number of single or consecutive 24-hour stoppages of all work?*

Yes ☐ No ☐

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Annex 3: Fair Work Ombudsman Industrial Action Fact Sheet



Fair Work OMBUDSMAN

Industrial action

What is industrial action?

Industrial action can take several forms. For employees, this is usually going on strike (refusing to attend or perform work) or imposing work bans (refusing to perform all their normal duties). In response to employee industrial action, employers may lock out their employees (close the doors or gates of a workplace and refuse to allow them to work).

Under the Fair Work Act (FW Act), industrial action is defined as:

- employees performing work in a manner different to how it is normally performed
- employees adopting a work practice that restricts, limits or delays the performance of work
- a ban, limitation or restriction by employees on performing, accepting or offering to work
- employees failing or refusing to attend for work or perform any work
- the lockout of employees from their employment by their employer.

A person is under no obligation to either take part, or not take part, in any form of industrial action unless they wish to do so.

Under the FW Act, industrial action does not include action by:

- employees that is authorised or agreed to by the employer
- an employer that is authorised or agreed to by, or on behalf of, their employees
- an employee if:
 - it was based on a reasonable concern about an imminent risk to their health or safety, and
 - the employee did not unreasonably fail to comply with a direction of their employer to perform other work that was safe and appropriate for them to do.

Industrial action under the FW Act can be protected or unprotected.

What is protected industrial action?

Employees and employers can only take protected industrial action when they are negotiating on a proposed enterprise agreement (except for a proposed greenfields agreement or cooperative workplace agreement).

The main importance of industrial action being protected is that it gives immunity from civil liability under State or Territory law (unless that action is likely to involve personal injury or damage, destruction or taking of property).

Industrial action is only protected if:

- it is action taken by employees (or their bargaining representatives) to support claims in relation to a proposed enterprise agreement (employee claim action), or
- it is action taken by employers or employees in response to industrial action taken by the other party (employer or employee response action), and
- the action meets the common and additional requirements for protection, which include:
 - not taking action before the nominal expiry date of a registered agreement
 - parties genuinely trying to reach agreement
 - observing the notice requirements set out below
 - complying with any relevant orders or declarations, including an order made by the Fair Work Commission (the Commission) directing bargaining representatives to attend a mediation or conciliation conference
 - not taking action in relation to a demarcation dispute (employee claim or response action)
 - not taking action in relation to unlawful terms or as part of pattern bargaining (for employee claim action only)
 - authorisation by secret ballot (for employee claim action only).

Fair Work Infoline: 13 13 94

www.fairwork.gov.au

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An employer, employee, employee organisation (such as a trade union), or official of an employee organisation that organises or engages in industrial action before the nominal expiry date of a registered agreement may be subject to penalties of up to \$19,800 per breach for an individual and \$99,000 per breach for a company.

The FW Act identifies the following as bargaining representatives for a proposed enterprise agreement:

- an employer that will be covered by the agreement
- a trade union who has a member that would be covered by the agreement (unless the member has specified in writing that he or she does not wish to be represented by the trade union, or has appointed someone else)
- a trade union that has applied to the Commission for a supported bargaining authorisation that relates to the agreement
- a person specified in writing as their bargaining representative by either an employer or employee who would be covered by the agreement.

For employees, the default bargaining representative is a trade union. However, employees can generally appoint whoever they wish as their bargaining representative, including themselves.

How does someone initiate protected industrial action?

In order to initiate protected industrial action, a bargaining representative for an employee who will be covered by an enterprise agreement must apply to the Commission for a protected action ballot order.

Protected action ballots are secret ballots that give employees the chance to vote on whether or not they want to initiate protected industrial action.

If the Commission makes a protected action ballot order, all bargaining representatives must also attend a mandatory conciliation conference during the ballot period. This is to facilitate agreement on some or all of the unresolved issues before any industrial action is taken.

For information on how to organise a protected action ballot visit fwc.gov.au/issues-we-help/industrial-action.

Does notice need to be given before taking industrial action?

Before employees take industrial action, written notice must be given to the employer.

Unless the action is in response to industrial action taken by the employer, at least 120 hours notice of the planned action must be given (unless the protected action ballot order states a longer period) for a proposed multi-enterprise agreement or otherwise 3 working days.

Before an employer takes industrial action, written notice must be given to each bargaining representative of an employee to be covered by the agreement. The employer must also take all reasonable steps to notify the employees to be covered by the proposed agreement of the action.

In all cases, the written notice must specify the nature of the action that will be taken and the day it will start.

Can protected industrial action be suspended or terminated?

The Commission can suspend or terminate protected industrial action.

The Commission can make an order to suspend or terminate protected industrial action on its own initiative, or on application by:

- a bargaining representative for the enterprise agreement
- the Minister for Employment
- a Minister of a State or Territory that has referred certain industrial relations powers to the Commonwealth.

The Commission can make such an order in the following circumstances when:

- the action has threatened, is threatening, or would threaten:
 - to endanger the life, personal safety, health or welfare of the population or part of it
 - to cause significant damage to the Australian economy or an important part of it
- the action is protracted and is causing, or is going to cause, significant economic harm to the employer or employees who will be covered by the agreement.

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The Commission can also make an order to suspend protected industrial action if:

- the action is both adversely affecting the employer or employees, and is threatening to cause significant harm to a third party. This can occur on application by:
 - the Minister for Employment
 - a Minister of a State or Territory that has referred certain industrial relations powers to the Commonwealth
 - a person, body, or organisation directly affected by the industrial action (this cannot be a bargaining representative for the proposed agreement, or an employee who will be covered by the agreement)
- bargaining representatives would benefit from a cooling-off period (on application by a bargaining representative).

Furthermore, the Minister for Employment can make a ministerial declaration terminating protected industrial action if that action is threatening or would threaten to:

- endanger the life, personal safety, health or welfare of the population or part of it
- cause significant damage to the Australian economy or an important part of it.

The Minister must inform the Commission and the bargaining representatives of the declaration and publish it in the Gazette. The declaration comes into operation the day it is made.

After making the declaration, the Minister can also give directions to bargaining representatives or employees who will be covered by the agreement to take or not take specified actions. Contravening those directions is also unlawful. Contravening a Ministerial direction can result in penalties of up to \$19,800 per breach for an individual and \$99,000 per breach for a company.

What if industrial action is not protected industrial action?

The Commission can make an order regarding industrial action that is not protected, or if taken, would not be protected:

- to stop the unprotected industrial action when it is already occurring
- to prevent the unprotected industrial action from occurring when it is threatened, impending, probable, or being organised.

The Commission can make this order on its own initiative, or upon application by either a person affected by the industrial action or an organisation representing that person.

Where the Commission has issued an order to stop or prevent unprotected industrial action, it is unlawful for that industrial action to occur or continue in contravention of the order.

Contravening an order made by the Commission can result in penalties of up to \$19,800 per breach for an individual and \$99,000 per breach for a company.

What are the payment arrangements for a period of industrial action?

The FW Act establishes rules governing payment to employees for periods of industrial action.

Where an employer is prohibited from making payment under the FW Act, it is a contravention for both the employer to make the payment and the employee (or employee organisation) to ask for or accept payment for such periods. Penalties of up to \$19,800 per breach for an individual and \$99,000 per breach for a company may apply.

Protected industrial action

An employer is prohibited from making payment to an employee for the total duration that the employee is engaged in protected industrial action.

However, if the industrial action is an overtime ban, employers can only withhold payment when the employer requires or requests an employee to work overtime, and the refusal is in contravention of the employee's obligations under a contract of employment, agreement or other industrial instruments.

Employees (and employee organisations) must not ask for or accept such payment. However, where the industrial action is taken in the form of a partial work ban, proportional payment rules apply. The employer may give the employees a partial work ban notice that contains details of the proportion of the reduction in payment. Alternatively, the employer may give a notice that no payment will be made to employees during the partial work ban. The notice must further provide that the employer will not accept any work from the employee until they resume normal duties.

Unprotected industrial action

Where a period of unprotected industrial action is taken for less than 4 hours on a day, the employer must withhold a minimum of 4 hours payment from the employee.

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Explaining Industrial Action

A joint statement from the AFAP, AIPA and the TWU for the 2025 Express Freighters Australia Pty Ltd Enterprise Agreement Negotiations



If the period of unprotected industrial action exceeds 4 hours on a day, then there can be no payment for the total duration of the industrial action that day.

However, if the industrial action is an overtime ban, employers can only withhold payment when the employer requires, or requests, an employee to work overtime, and the refusal is in contravention of the employee's obligations under a contract of employment, agreement or other industrial instruments.

Employees (and employee organisations) must not ask for or accept such payment.

Are there protections when engaging in industrial action?

The FW Act prohibits a person from taking adverse action against a person because that person takes part in, or proposed to take part in, an industrial activity.

This includes:

- becoming or not becoming a member of a trade union
- organising lawful activity on behalf of a trade union
- representing a trade union or seeking to be represented by one
- exercising a workplace right (such as participating in protected industrial action, or in a protected action ballot).

The FW Act also prohibits a person from taking adverse action against another person because they do not take part in, or propose not to take part in, industrial action or against an employer who does not make payments to persons engaging in industrial action.

Contravening these protections can result in penalties of up to \$19,800 per breach for an individual and \$99,000 per breach for a company. For more information, see our Protections at work fact sheet at fairwork.gov.au/factsheets.

What role does the Fair Work Ombudsman play?

The Fair Work Ombudsman (FWO) investigates allegations of contraventions of the industrial action provisions of the FW Act, including:

- industrial action taken prior to the nominal expiry date of an existing industrial agreement
- contraventions of orders made by the Commission to stop or prevent industrial action taking place
- contravening a Ministerial direction to take, or not take, specified actions
- payment made in relation to certain periods of industrial action in contravention of the FW Act
- any adverse action taken against a person in relation to their right to engage in industrial activities
- unlawful conduct in relation to protected action ballots
- the requirement for a person to comply with an order or direction from the Commission with respect to a protected action ballot.

If the FWO identifies a contravention of a civil remedy provision under the FW Act, there are a range of compliance tools available.

For more information, read our Compliance and enforcement policy at fairwork.gov.au/compliancepolicy.

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What role does the Fair Work Commission play?

The Commission plays a role in ensuring that the bargaining process, and any associated industrial action, occurs according to relevant Commonwealth workplace laws. Bargaining representatives of employees wishing to take industrial action to support their claims must first seek an order from the Commission for a protected action ballot authorising the industrial action.

In granting a protected action ballot order the Commission must make orders directing all bargaining parties for a proposed enterprise agreement to attend a conference before the Commission during the ballot period.

The Commission has the power to suspend or terminate protected industrial action. The Commission may also make orders to stop or prevent unprotected industrial action. Such orders are enforceable in the courts.

Further, members of the Commission are experienced in a range of alternative dispute resolution techniques including conciliation, mediation, and arbitration.

Depending on the circumstances, the Commission can exercise statutory powers that enable disputes to be resolved on a final basis.

Further information

Industrial action is provided for by sections 406–477 of the FW Act.

For further information on the agreement making process and industrial action please visit the Commission's Industrial action page at [fwc.gov.au/issues-we-help/industrial-action](https://www.fwc.gov.au/issues-we-help/industrial-action).

CONTACT US

Fair Work online: fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

Help for people who are deaf or have hearing or speech difficulties

You can contact us through the National Relay Service (NRS).

Select your [preferred access option](#) and give our phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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