



## Qantas LH EA 11 AFAP Explanatory Document

### Next Steps

The AFAP continues to plan and prepare for all possible outcomes in bargaining. We draw on both specialist internal expertise and external legal advice to ensure our strategy is informed, effective, and in the best interests of our pilot members.

In the event of a yes vote, we will respect the outcome and support its approval, provided the document complies with the Fair Work Act 2009 (Cth). Qantas has confirmed that the AFAP will have an opportunity to review the final document before its release for the vote. We will carefully assess it for compliance and advise Qantas of any compliance issues so these can be addressed before the vote.

AFAP advice for pilots is to assess the deal as a whole (consider the positives and negatives) and review all available information, including the options outlined below, before deciding how to vote.

### What happens if there is a no vote?

Should pilots reject the offer, the AFAP will resume bargaining as soon as possible, and depending on the circumstances, we may conduct a further survey to gather additional information as to why pilots rejected the offer.

We will then present solutions to Qantas that address pilots' concerns and seek to have an agreement put back out to a vote as soon as possible. A negotiated agreement, endorsed by the AFAP, will always remain our goal.

If a negotiated resolution cannot be achieved, the AFAP will be willing to utilise any of our rights available under the Fair Work Act to advance the interests of our members. We discuss these options further below:

### Bargaining Dispute – FWC assistance with bargaining

Under s.240 of the Act, the AFAP may make an application to the Fair Work Commission (FWC) to deal with a dispute between bargaining representatives about an agreement.

This is an option to utilise the assistance of a Commission member to advance negotiations when negotiations in the room have reached a stalemate.



Under this part of the Act, the FWC can:

- mediate or conciliate the dispute; and
- make a recommendation or express an opinion.

This process aims to leverage the FWC's influence to facilitate a negotiated outcome. This may include directing a party to provide additional information or recommendations on whether a party should accept an outcome.

These powers however, are limited in that they are not binding. The FWC may arbitrate the dispute only if all the bargaining representatives for the proposed agreement agree.

An application under s.240 of the Act is also a prerequisite for an application for an intractable bargaining declaration (see below).

## Protected Industrial Action

A further option to escalate in the event of a negotiated outcome not being reached is protected industrial action (PIA). PIA allows pilots to engage in strikes or other industrial action without risk of repercussions, such as fines or termination of employment.

The AFAP have extensive experience in utilising PIA effectively across the industry. However, this option is always a last resort. It is considered only after all other avenues to achieve a negotiated outcome have been exhausted. Even then, several procedural steps must occur before any action can commence.

## Protected Action Ballot Order (PABO)

The first step in pursuing PIA is an application by the AFAP (or other bargaining representative) to apply for a Protected Action Ballot Order (PABO).

We must demonstrate to the FWC that we are "genuinely trying to reach agreement", which is something that the AFAP ensure we comply with throughout bargaining to always preserve our options under the Act. This requires that we give serious consideration to all Qantas' claims. This does not require we make concessions or agree with these claims.

If the FWC approves a PABO, an independent ballot agent conducts a confidential ballot of AFAP members (or other Union applicants).

This ballot will include types of PIA specified by the AFAP (generally a range of options from minor bans through to strikes of varying duration), and members vote to approve each of these



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actions individually. In all, 50% of eligible members must participate, and of those, at least 50% must approve each action for it to be available as PIA.

The ballot declaration will not disclose the identity of Union members or how they voted. However, it does provide the total number of AFAP members and the total votes for each type of PIA. Therefore, maximising membership numbers and participation in the PABO is critical to demonstrate to Qantas the unity and resolve of the pilots and strengthen our collective bargaining position.

Pilots can join the AFAP at any time and participate in PIA with all the protections of the Act, even if they don't vote in the ballot.

## Notification of PIA

The AFAP must then give 3 clear working days' notice of PIA, before it can commence. The notice must specify the type of action and the date and time when it commences. Any AFAP member eligible for coverage under the LHEA can then participate in the action and be protected.

## Payment for PIA

Employees are not permitted to be paid for any time they are participating in strikes, even when they are PIA. This does not apply in the case of a "partial work ban", which is any PIA that is not a complete stoppage of work. For example, this might be a ban on pilots accepting a simulator support duty assigned from reserve but otherwise performing their reserve duty as normal.

In the case of a partial work ban, the Employer has the following options:

- accept the partial performance of duties and pay employees as usual; or
- accept the partial performance of duties and deduct a partial payment from an employee's wages commensurate with the duties not performed (this calculation can be disputed); or
- refuse to accept partial payment of duties and not pay employees at all for the duration of the ban.

This last option allows an Employer to escalate action by effectively withholding pay unless the employee agrees to perform their full duties or the ban is withdrawn. If an Employer takes this step, employees may respond by going on strike without notice.

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## Employer Response Action

An Employer also has the option of taking response action if PIA is taken by employees. The Act permits an employer to engage in a “lockout”, which is more flexible than the wording suggests, as it does not require that all employees be locked out of the workplace.

Once an Employer takes industrial action, employees can then give notice of “employee response action”. This action can be any form of PIA and does not need to have been authorised by a PABO.

## Other responses

Other options are available to Qantas, such as applying to terminate the PIA – a tactic familiar to LH pilots from previous negotiations. These are complex areas of law, and should we reach that stage, the AFAP will provide detailed legal guidance to ensure members are fully informed and protected.

## Intractable bargaining

### Intractable bargaining declaration (IBD)

A bargaining representative can apply for an intractable bargaining declaration (IBD) when negotiations reach an impasse and:

- have been bargaining for at least 9 months (the minimum bargaining period); and
- the agreement has been expired for at least 9 months; and
- have already tried to resolve the bargaining dispute, including by making an application under section 240 (see above).

In addition, the FWC must consider several other factors in determining whether a negotiation is “intractable”. Even though this negotiation meets the eligibility requirements for an IBD application, it does not guarantee that the FWC will, based on current circumstances, determine that bargaining is “intractable”.

## Workplace Determination

If the FWC makes an intractable bargaining declaration, and bargaining representatives do not agree on the settlement of the new agreement during a post declaration negotiation period, the FWC must make an intractable bargaining workplace determination (IBWD).

In that event, the FWC will set the terms and conditions of employment in place of the current enterprise agreement and pilots will not get a vote on the outcome. The AFAP and other



bargaining representatives will present detailed submissions and evidence to advocate for terms that best serve our members' interests. But ultimately, it is out of the pilots' hands, and the final decision rests with a Full Bench of the FWC.

## Agreed Terms

An IBWD can only be made concerning items which are not "agreed terms". Agreed terms are terms that the bargaining representatives have already agreed should be included. They can be terms that were agreed upon:

- at the time the application for an intractable bargaining declaration was made; or
- at the time the intractable bargaining declaration was made; or
- at the end of the post-declaration negotiating period.

We are aware that the AFAP's in-principle agreement as a bargaining representative may "lock in" a term if we reach an IBD. However, this will not preclude us from utilising the leverage of our endorsement to achieve in principle agreement. However, as always, it will ultimately be up to the pilots to approve in a vote.

Pilots should not be concerned that agreed terms are locked in based on the current offer. Previous FWC decisions found that parties can withdraw their previous endorsement of agreed items or make an agreement subject to agreement on the whole package (i.e., nothing's agreed until everything's agreed). This means in the event of a no vote, any bargaining representative that has previously reached in principle agreement may revisit or "unagree" terms.

## Terms must be more favourable

Under s270A of the Act, any terms of a IBWD "must be not less favourable to each of those employees, and any employee organisation that was a bargaining representative of any of those employees, than a term of the enterprise agreement that deals with the matter." The consequence of this provision is it limits the scope of the changes that are not agreed by the Unions that Qantas can seek through IBWD.

**Will the AFAP make an application for an intractable bargaining declaration (IBD) after a no vote?**

The AFAP was the majority union representing pilots through the Network intractable bargaining workplace determination. The AFAP engaged external lawyers and have received extensive advice regarding IBD.



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While all parties will seek to put a “spin” on the Network outcome, the decision serves as little precedent value for any other workplace determination. This is because each negotiation will have unique facts and circumstances and will largely stand alone.

At this stage, even in the event of a no vote, the AFAP does not believe the threshold for an IBD has been met, given our commitment to achieving a negotiated outcome. Additionally, before any IBD application could even be made, an application under s.240 would first be required.

In the Network case, multiple AFAP-endorsed agreements were voted on (and rejected) and protected industrial action had occurred before the FWC determined the dispute was intractable.

Our firm position remains that negotiated outcomes are always preferable to allowing a third party to impose terms - a process that is uncertain, complex, and slow. For context, the Network Aviation workplace determination took approximately 18 months from the initial IBD application to the final determination.

While Qantas would be limited in what it could achieve through such a process, the AFAP also recognises that pursuing significant structural changes (for example, to SO pay scales or key conditions) through a workplace determination would also present challenges.

## Summary

The AFAP remains committed to achieving the best possible outcome for pilots through constructive negotiation.

However, we will always be prepared to use every available tool under the Fair Work Act, including FWC processes, intractable bargaining provisions, and protected industrial action, if required to protect and advance your interests.

We share this information so that all members can make an informed and balanced decision when considering how to vote — understanding both the potential risks and the pathways available to improve the overall package in the event of a no vote.

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