



Australian Government

WorkChoices

Protected industrial action

WorkChoices continues to protect the right of employees to take lawful industrial action when negotiating a new workplace agreement, and also introduces a range of measures to improve the regulation of industrial action.

To be regarded as protected, or immune from adverse legal consequences, industrial action must take place during a bargaining period for a collective agreement and must:

- be in support of claims proposed for a new collective agreement; or
- be a response to industrial action by another negotiating party.

Industrial action is prohibited during the life of a collective agreement or Australian Workplace Agreement (AWA).

The Australian Industrial Relations Commission (AIRC) continues to supervise protected industrial action. It retains the power to issue orders to prevent or stop unprotected industrial action.

Secret ballots for protected action

Under WorkChoices, a secret ballot must be held before protected industrial action can be taken.

If an organisation of employees (trade union) initiates a bargaining period it may apply to the AIRC to order a secret ballot. If an employee or employees initiates the bargaining period then any employee may apply to the AIRC to order a ballot on behalf of the other employees.

An application for a secret ballot is only able to be made:



WorkChoices and industrial action

- after the expiry of an existing collective agreement;
- if a bargaining period for a new collective agreement has been notified to the AIRC; and
- if the proposed agreement does not contain prohibited content.

Prohibited content

Terms that are prohibited from workplace agreements include those:

- prohibiting AWAs;
- restricting the use of independent contractors or on-hire arrangements;
- allowing for industrial action during the term of an agreement;
- providing for trade union training leave, bargaining fees to trade unions or paid union meetings;
- providing that any future agreement must be a union collective agreement;
- mandating union involvement in dispute resolution;
- providing a remedy for unfair dismissal; and
- other matters proscribed by regulation/legislation.

For more information on prohibited content, see the 'WorkChoices and content of agreements' fact sheet.

The AIRC will be able to order a secret ballot only if during the bargaining period, the applicant generally tried to reach agreement with the employer, the employees or unions are genuinely trying to reach agreement with the

employer, and no pattern bargaining is taking place.

If a union applies for a secret ballot, only union members who would be covered by the proposed agreement will be eligible to vote. If employees who are seeking a non-union agreement make the application, all employees that will be covered by the proposed agreement will be eligible to vote.

To approve the industrial action, at least 50 per cent of eligible employees need to vote and, of them, more than 50 per cent need to vote in favour of the proposed industrial action.

The Australian Government will cover 80 per cent of the cost of the ballot. The other 20 per cent of the cost will be covered by either the union or the group of employees who applied for the ballot.

The Australian Electoral Commission and other authorised agents will be able to conduct secret ballots.

Suspending and terminating a bargaining period

If a bargaining period has been suspended or terminated, industrial action is not protected and not immune from adverse legal consequences.

Under WorkChoices, the AIRC can be required to either to suspend or terminate a bargaining period in a range of circumstances. In general, the grounds set out in the Workplace Relations Act prior to the commencement of WorkChoices have been retained. These are where:

- a party has failed to genuinely try and reach agreement with other parties;
- there has been a failure to comply with an AIRC direction or order;

- a union is organising industrial action in relation to employees who are not eligible to be members;
- the industrial action relates to a demarcation dispute; or
- the industrial action is threatening to endanger life, personal safety, health or welfare, or to cause significant economic damage.

Under WorkChoices, three new grounds have been added:

- suspension or termination if 'pattern bargaining' is taking place;
- a cooling-off suspension where this would assist the parties to resolve the dispute; and
- a suspension where third parties are directly threatened with significant harm from the industrial action.

Essential services

Under WorkChoices, the Minister for Employment and Workplace Relations is allowed to issue a declaration where protected industrial action threatens the life, personal safety, health or welfare of the population or part of it or is likely to cause significant damage to the economy or an important part of it.

A declaration will terminate all relevant bargaining periods and authorise the Minister to issue written directions to reduce or remove the threat to essential services, including directing specified negotiating parties to take or refrain from taking specified actions.

Workplace determinations

If a bargaining period is terminated by a declaration by the Minister or because it threatens life, personal safety, health or welfare of the population or is likely to cause significant

damage to the economy, the dispute will be referred to a full bench of the AIRC to settle the matters at issue by a workplace determination.


If a new agreement is entered into during the life of the workplace determination, it will override the determination. Parties negotiating a new agreement during the life of the workplace determination cannot take protected industrial action.

State systems

Under WorkChoices, provisions have been established to deal with damaging industrial action that is happening, threatened, impending, probable or being organised by state system participants, where it affects employers and employees who are a part of the new WorkChoices system. The AIRC must order such industrial action to stop, not occur and not be organised.

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the **WorkChoices Infoline** on **1300 363 264** or visit the **WorkChoices** website **www.workchoices.gov.au**



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