

Fact sheet

Protected action ballots

When is a protected action ballot required?

A protected action ballot to authorise industrial action must be undertaken before industrial action can be lawfully taken, except where the action is in response to industrial action by the other party in enterprise bargaining.

Protected action ballots will normally be conducted by the Australian Electoral Commission (AEC).

What has to occur for a protected action ballot to be conducted?

A protected action ballot will only be conducted if the Fair Work Commission (the Commission) makes a protected action ballot order as a result of a protected action ballot application being made.

An application for ballot must:

- be made by one or more bargaining representatives of an employee who will be covered by a proposed enterprise agreement which is not a greenfields or multi-enterprise agreement
- be made **no more than 30 days** before the nominal expiry date of any existing agreement
- if the applicant wishes someone other than the AEC to conduct the ballot (called a **ballot agent**), specify the name of that person.

In considering whether or not to order a protected action ballot, the Commission must be satisfied that the bargaining representative(s) of the employees seeking the ballot have been genuinely trying to reach agreement.

If the Commission grants the application, the order will include details of:

- the name of each applicant for the order
- the group(s) of employees who are to be balloted
- the date the ballot closes
- the question(s) to be put (including the nature of the proposed industrial action).

Who can vote in the ballot?

All employees who:

- will be covered by the proposed enterprise agreement
- were represented by a bargaining representative who applied for the ballot order, and
- are included in the group of employees specified in the ballot order.

When is a ballot successful?

Industrial action is authorised by a ballot if:

- at least 50 per cent of those on the voting roll participated in the ballot, and
- more than 50 per cent of votes cast were in favour of the industrial action.

Note: To be protected action, the industrial action must commence no more than 30 days after the ballot is declared, unless that time is extended by the Commission.

Who pays the costs of holding a ballot?

The Commonwealth pays the cost if the ballot is conducted by the AEC.

Applicants for a protected action ballot, who use a ballot agent other than the AEC, are liable for the full cost of holding the ballot, whether or not the ballot is completed.

Ballot results

Under the *Fair Work Act 2009*, the Commission is required to publish the results of protected action ballots on its website (www.fwc.gov.au/resolving-issues-disputes-and-dismissals/industrial-action/protected-action-ballots/ballot-results) (or by some other means), as soon as practicable after being informed of them.