

# Fact sheet

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## About industrial action

### What is industrial action?

Industrial action can take a variety of forms. For example, employees may go on strike (that is, refusing to attend or perform work) or impose work bans (that is, refusing to perform all their normal duties). Employers may lock out their employees (that is, refusing to allow them to work or to pay them).

### What is protected industrial action?

In general, for industrial action to be lawful it must be protected industrial action.

The requirements for taking protected industrial action include:

- an existing agreement has passed its nominal expiry date
- the industrial action is in support of a new enterprise agreement (or is in response to industrial action by the other side)
- the industrial action does not involve pattern bargaining
- in the case of employees initiating action in support of claims, the Fair Work Commission has granted an order for a protected action ballot to be held and the ballot has endorsed action being taken
- the required notice has been given to the other party
- the bargaining representative(s) organising the action, or representing the employees who are taking or organising the action, must be genuinely trying to reach agreement.

Industrial action will not be protected if it:

- is taken while the bargaining period has been suspended
- relates significantly to a demarcation dispute
- is in support of claims for a multi-enterprise or greenfields agreement
- is in support of the inclusion of claims that cannot be lawfully included in an agreement (these are known as **unlawful terms**), or
- contravenes any orders made by the Fair Work Commission.

### What is the Fair Work Commission's role?

The Fair Work Commission (the Commission) plays a role in ensuring that the bargaining process, and any associated industrial action, occurs according to law. 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.

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.

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This fact sheet is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.