



ORDER

Fair Work Act 2009

s.437 - Application for a protected action ballot order

Police Federation of Australia-Australian Federal Police Association Branch

v

The Commonwealth of Australia as Represented by the Australian Federal Police

(B2024/128)

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 21 FEBRUARY 2024

Proposed protected action ballot of employees of The Commonwealth of Australia as represented by the Australian Federal Police.

Pursuant to s.443 of the *Fair Work Act 2009* (the **Act**) the Fair Work Commission orders:

1. PROTECTED ACTION BALLOT TO BE HELD

The Police Federation of Australia-Australian Federal Police Association Branch (**AFPA** or **Applicant**) is to hold a protected action ballot of employees of The Commonwealth of Australia as represented by the Australian Federal Police (**AFP** or **Employer**) described in clause 3 of this order.

2. NAME OF PERSON AUTHORISED TO CONDUCT THE BALLOT

The ballot is to be conducted by “BA” (**Agent**). The contact details of the Agent are:

Redacted Information

3. GROUP OR GROUPS OF EMPLOYEES TO BE BALLOTTED

In accordance with s.437(5) of the Act, the employees to be balloted are:

All Employees employed by the Employer under section 24 of the *Australian Federal Police Act 1979* who will be covered by the proposed enterprise agreement and whom the AFPA is the bargaining representative of or who are independent bargaining representatives for themselves but are members of the AFPA.

4. DATE BY WHICH BALLOT CLOSES

The date by which voting in the protected action ballot is to close is 8 March 2024.

5. NOTICE OF INDUSTRIAL ACTION

Pursuant to s.443(5) of the Act, the AFPA is required to provide five (5) working days written notice in respect to the action described as:

3. *Indefinite or periodic bans on the attendance at any Australian Court as informants or witnesses other than in reply to a subpoena*
4. *Indefinite or periodic bans on the transport of witnesses for the Office of Public Prosecutions.*
22. *The indefinite or periodic bans on attending any Federal Politicians functions or events that do not carry a “significant” threat rating or higher.*
23. *Indefinite or periodic bans on escorting Federal Politicians through airports where there is no known or assessed risk.*
25. *Indefinite or periodic bans on any liaison visits to any Federal Politicians offices as well as any Foreign Embassy or Consulates.*
26. *Indefinite or periodic bans on assistance in the controlled delivery of substituted illicit drugs or other substituted illicit items*
27. *Indefinite or periodic bans on assistance to other Commonwealth Agencies Executing Warrants, or other processes including arrest, where there is no need for a Specialist Tactical Resource.*
28. *Indefinite or periodic bans on attendance at Australia Post mail centres and calls for assistance for detection of drug packages*
29. *Indefinite or periodic bans on AFP involvement in other Commonwealth investigations (Tobacco (excise), Fraud, etc.) unless so entrenched in Organised Crime as to make it necessary.*
34. *Indefinite or periodic bans on involvement in CACT operations*
35. *Indefinite or periodic bans on the submission of criminal asset restraining orders to court.*

In respect of the remaining actions, AFPA is required to provide three (3) working days written notice.

6. QUESTIONS

The question(s) to be put to voters in the ballot are:

Do you, for the purpose of advancing claims made in the negotiation of an enterprise agreement covering your employment, authorise the taking of any or all industrial action which is authorised by this ballot, whether separately, concurrently and- /or consecutively in the form of:

1. Indefinite or periodic bans on members agreeing to perform voluntary duties.
2. Indefinite or periodic bans on all forms of criminal or traffic infringement notices, except for traffic infringement notices relating to drunk / drug driving, antisocial or dangerous driving behaviours or penalty notices triggering an immediate disqualification or suspension of licence.
3. Indefinite or periodic bans on the attendance at any Australian Court as informants or witnesses other than in reply to a subpoena.
4. Indefinite or periodic bans on the transport of witnesses for the Office of Public Prosecutions.
5. Indefinite or periodic bans on the collection of data, recording of daily industrial action instances and provision of information to the Australian Federal Police and Government regarding protected industrial actions.
6. Indefinite or periodic bans on the giving of a direction by a member to another member to perform work which is inconsistent with any form of protected industrial action.
7. Indefinite or periodic bans on compliance with a direction to perform work which is inconsistent with any form of protected industrial action.
8. The indefinite or periodic interruption of work in order for members to speak to the media in relation to the bargaining process, protected industrial action and concerns regarding workloads, Australian Federal Police resource shortages or disadvantages with the existing Enterprise Agreement.
9. Indefinite or periodic bans on a member contacting another member (the second member) who is not in receipt of an availability allowance, outside the second member's working hours, except for in the circumstance of an emergency situation or genuine welfare matter.
10. The indefinite or periodic interruption of work, in order to change signature blocks in emails and replace it with the protected industrial action signature block and campaign messages circulated by The Australian Federal Police Association.
11. Indefinite or periodic bans on the preparation and entry of Management Significant Entries into any Information Management System provided there is no identifiable risk to public safety.
12. Indefinite or periodic bans on the collection of administrative statistics.
13. When requested by a member of the public to sign a statutory declaration or witness a document, the indefinite or periodic interruption of work to inform them about the

Australian Federal Police Association industrial relations campaign.

14. The interruption of work periodically, over an indefinite period or for specified periods, when answering the phone to inform the public about the Australian Federal Police Association industrial relations campaign, provided that the phone call does not relate to an emergency matter.
15. The interruption of work periodically at any location, over an indefinite period or for specified periods, to allow members to speak to the public, media, politicians and/or government representatives about the Australian Federal Police Association industrial relations campaign.
16. The indefinite or periodic interruption of work in order for members to write on AFP vehicles at any location, with non-permanent markings on the vehicle to inform the public about the Australian Federal Police Association industrial relations campaign.
17. The indefinite or periodic interruption of work for members to park any AFP vehicle at any location, with non-permanent markings on the vehicle to inform the public about the Australian Federal Police Association industrial relations campaign.
18. The indefinite or periodic interruption of work in order to affix campaign material in work locations stating the concerns of members relating to workloads and staffing shortages.
19. The indefinite or periodic interruption of work in order to affix campaign material such as pins, stickers, or badges to uniforms and other work locations.
20. The indefinite or periodic interruption of work to don apparel that is Hi-Vis, colourful and/or with union logo and slogans.
21. The indefinite or periodic interruption of work for members to park police vehicles in front of speed cameras, at school zones and any Australian Federal Police related Government facility while displaying emergency lights.
22. The indefinite or periodic bans on attending any Federal Politicians functions or events that do not carry a "significant" threat rating or higher.
23. Indefinite or periodic bans on escorting Federal Politicians through airports where there is no known or assessed risk.
24. Indefinite or periodic bans on investigating any referrals sent to the AFP from the offices of Federal Politicians where no offence has been committed.
25. Indefinite or periodic bans on any liaison visits to any Federal Politicians offices as well as any Foreign Embassy or Consulates.
26. Indefinite or periodic bans on assistance in the controlled delivery of substituted illicit drugs or other substituted illicit items.
27. Indefinite or periodic bans on assistance to other Commonwealth Agencies Executing

Warrants, or other processes including arrest, where there is no need for a Specialist Tactical Resource.

- 28. Indefinite or periodic bans on attendance at Australia Post mail centres and calls for assistance for detection of drug packages
- 29. Indefinite or periodic bans on AFP involvement in other Commonwealth investigations (Tobacco (excise), Fraud, etc.) unless so entrenched in Organised Crime as to make it necessary.
- 30. Indefinite or periodic bans on familiarisation tours for dignitaries and International Protected Persons.
- 31. Indefinite or periodic bans on the provision of information to the Australian Institute of Criminology.
- 32. Indefinite or periodic bans on the provision of training to other Commonwealth Agencies or international equivalents.
- 33. Indefinite or periodic bans on the filling in of AFP vehicle logbooks.
- 34. Indefinite or periodic bans on involvement in CACT operations
- 35. Indefinite or periodic bans on the submission of criminal asset restraining orders to court.
- 36. Indefinite or periodic bans on attendance at AFP offices where tasks can be undertaken remotely.

Yes [] No []

7. EMPLOYER TO PROVIDE LIST OF ELIGIBLE EMPLOYEES

- 7.1 The Employer is to provide to the Agent by 4:00pm on the second working day after the day the order is issued, a list of its employees (as at the date of the order) being a list that includes all of the employees who would be covered by the proposed enterprise agreement, in the following format:
- 7.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named “Australian Federal Police– Employee List”.
 - (a) The list is to be in alphabetical order of surname.
 - (b) The list is to contain the information (if known) for each employee who would be covered by the proposed enterprise agreement as indicated by those column names set out below:

Column 1	Australian Federal Police Identification Number (AFPID)
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Column 2	Surname
Column 3	First Name
Column 4	Whether the employee is represented by a bargaining representative other than the AFPA (Yes/No)

7.3 The list must be accompanied by a declaration in writing that the Employer reasonably believes that the information is complete, up-to-date and accurate in accordance with Regulation 3.15 of the *Fair Work Regulations 2009* (**Regulations**).

7.4 The Employer may provide the list of employees to the Agent by way of encrypted or password protected email or other electronic means that is accessible by the Agent.

8. APPLICANT TO PROVIDE LIST OF ELIGIBLE MEMBERS

8.1 The Applicant is to provide to the Agent by 4:00pm on the second working day after the day the order is issued a list of its members (as at the date of the order) employed by the Employer in the following format:

8.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named “AFPA – Member List”.

(a) The list is to be in alphabetical order of surname.

(b) The list is to contain the information (if known) for each member who would be covered by the proposed enterprise agreement as indicated by those column names set out below:

Column 1	Australian Federal Police Identification Number (AFPID)
Column 2	Surname
Column 3	First Name
Column 4	Work Email Address
Column 5	Private Email Address
Column 6	Mobile Phone Number

8.3 The list must be accompanied by a declaration in writing that the Applicant reasonably believes that the information is complete, up-to-date and accurate in accordance with Regulation 3.15 of the Regulations.

8.4 The Applicant may provide the list of members to the Agent by way of encrypted or password protected email that is accessible by the Agent.

9. VOTING METHOD

- 9.1 The ballot is to be conducted by electronic voting and must take place in compliance with the Act, the Regulations and this order.
- 9.2 Pursuant to s.450 of the Act, the Agent is to conduct the protected action ballot in accordance with the following directions.

Timetable

- 9.2.1 The Agent will determine the date the ballot commences in accordance with s.451. The Commencement Date will be included in the timetable compiled in accordance with paragraph 10 of this order. The ballot will not commence before the Commencement Date.
- 9.2.2 The date by which voting in the protected action ballot is to close is 8 March 2024.

Voting method

- 9.2.3 The ballot will be held electronically.
- 9.2.4 The Agent will design a voting website on a secure server which will allow eligible voters to vote in the ballot.
- 9.2.5 The Agent will allocate to each eligible voter on the list of voters a unique identifier, being a randomly generated internet voting password, to access and vote on the website.
- 9.2.6 Just prior to the opening of the ballot, the Agent will issue to eligible voters an Instruction Sheet. The Instruction Sheet will contain the web address for the voting website, each eligible employee's randomly generated internet voting password, instructions on how to vote and any other material the Agent considers relevant.
- 9.2.7 The Agent will issue the Instruction Sheet to each employee's email address, where provided. Additionally, the Agent will send an SMS to any mobile number for that eligible voter, where a mobile phone has been provided.
- 9.2.8 The Agent will ensure the voting website will only be accessible for voting in the ballot by eligible voters.
- 9.2.9 The Agent will ensure that the operation of the internet voting system provides that an authenticated voter may cast only one vote in the ballot.

Updates to the list of voters

- 9.2.10 Before the Commencement Date, the Employer will provide the Agent with the names of any of its employees that have ceased employment on the day such employment ends. If any of these employees are on the list of voters, their internet voting password to vote in the ballot will be disabled.

10. FINALISING THE LIST OF VOTERS

10.1 The Agent is to finalise the list of voters using its discretion.

11. TIMETABLE FOR BALLOT AND COMPILATION OF LIST OF VOTERS

11.1 The Agent will compile a timetable in accordance with the Act and the Directions outlined in paragraphs 9.2.1 and 9.2.2 of this order, to be sent to the parties.

11.2 The Agent may make variations to the timetable (excluding the date by which the ballot would close) as may be necessary to bring about the efficient and expeditious conduct of the protected action ballot.

12. INFORMATION

12.1 The Agent may give any ballot-related notice, information or other material to employees by means including sending the materials to employees' work email addresses and personal or other email addresses.

12.2 The Agent shall, as soon as practicable, issue to eligible employees on the roll of voters, the notice to employees, consistent with reg. 3.13 of the Regulations, including by email to their nominated email address, and SMS to any mobile phone number for that eligible voter, where a mobile phone number has been provided.

12.3 The notice to employees shall contain a copy of the protected action ballot order and include the following information and statements:

- a) the name and contact details of the Agent including telephone contact and email address details;
- b) the timetable for the conduct of the protected action ballot including the times of opening and closing the ballot;
- c) a statement informing employees that the protected action ballot is to be conducted by electronic voting;
- d) information about how eligible employees will receive their voting instructions and how they can vote electronically on the designated voting website using unique identifiers;
- e) a statement inviting employees to contact the Agent if the employee believes that he or she should be included on the roll of voters;
- f) a statement inviting employees to contact the Agent if the employee believes that he or she should not be included on the roll of voters;
- g) a statement inviting employees to contact the Agent, the independent advisor (if any) or the Fair Work Commission in the event that the employee has any concerns or complaints relating to the conduct of the protected action ballot;

- h) a statement that the protected action ballot is to be conducted as a secret ballot and that employees are free to approve or not approve the proposed industrial action; and
- i) contact details of the independent advisor if one has been appointed.

13. PROVISION OF INFORMATION AND ASSISTANCE TO AUTHORISED BALLOT AGENT

- 13.1 The Applicant and the Employer are to comply as quickly as is reasonably practicable with any reasonable request made by the Agent pursuant to the Act or the Regulations for information or assistance.
- 13.2 The Employer shall facilitate the email delivery of ballot related notices, information, or other materials to all employees by whitelisting the domain utilised by the Agent.
- 13.3 The Employer shall allow access to the voting web site from all employees' places of work and accommodation (if applicable) by whitelisting the site across the Employer's internet network.
- 13.4 Where the Employer does not manage the IT networks that employees may use to vote they will do all that is practicable to ensure that Orders 12.2 and 12.3 are complied with.

14. SCRUTINEERS

- 14.1 The Applicant and the Employer are to comply with the provisions contained in the Regulations and to notify in writing to the Agent the names of any scrutineer(s) that they propose to authorise to attend the conduct of the ballot.
- 14.2 Any notification of the appointment of any scrutineer(s) must be served on the other party. Should the other party object to the appointment of any scrutineer(s), then that party is able to apply to the Fair Work Commission to have its objection heard and determined.
- 14.3 The functions of any scrutineer(s) appointed pursuant to this clause will only occur once all votes have been received, the ballot has closed, but before any ballot result is declared.

15. RESULTS

- 15.1 The Agent may, on request, report to either the Employer or the Applicant the participation rate.
- 15.2 The Agent shall report the results of the protected action ballot as soon as practicable after the close of voting to the Applicant, the Employer and the Fair Work Commission. The report to the Commission is to be provided only to chambers.hampton.dp@fwc.gov.au

16. CONFIDENTIALITY

Pursuant to s.594 of the Act, the Commission orders that the name of the ballot agent and any information identifying the ballot agent be prohibited from publication and kept confidential to the parties, Commission and employees to be balloted only, and referred to by the pseudonym "BA" in any published orders or decisions in this proceeding.

15. DATE OF EFFECT

This order commences on 21 February 2024.

The image shows a handwritten signature in black ink on the left, which overlaps with the circular seal of the Fair Work Commission on the right. The seal features the text "THE SEAL OF THE FAIR WORK COMMISSION" around the perimeter and the Australian coat of arms in the center, with the word "AUSTRALIA" below it.

DEPUTY PRESIDENT

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