



Australian
Nursing &
Midwifery
Federation

NORTHERN TERRITORY

Information Sheet

Protected Industrial Action



This information sheet contains information about protected industrial action that may occur during enterprise agreement (EA) bargaining.

Authorised by: Cath Hatcher, Branch Secretary March 2022

What is Protected Industrial Action?

Protected Industrial Action (PIA) is simply industrial action that, when taken during an enterprise agreement bargaining period in compliance with the *Fair Work Act 2009* (FW Act), Employees are 'protected' from civil liability claims arising from the industrial action (unless that action is likely to involve personal injury or damage, destruction or taking of property).

PIA can include:

- Performing work in a manner different to how it is normally performed (e.g. refusing to complete paperwork that generates Medicare or other income)
- Adopting a practice that restricts, limits or delays the performance of work (e.g. refusing to delay meal or tea breaks when requested).
- A ban, limitation or restriction by Members on performing or accepting work (e.g. refusal to do overtime)
- A refusal by employees to attend or perform any work (otherwise known as a strike or stop work period)
- The Employer also may take PIA in response by locking out employees from the workplace (although this is rare in healthcare workplaces)

When can PIA be taken?

Under the FW Act PIA can only occur when:

- The action taken by employees to support claims in relation to an enterprise agreement negotiations, or;
- The action is proposed and taken during negotiations for an enterprise agreement. (e.g. at the time of writing (March 2022), negotiations for and Agreement to replace the *NTPS Nurses and Midwives 2018 - 2022 Enterprise Agreement* have not yet commences so PIA could not legally be proposed or undertaken).

- PIA cannot be taken before the nominal expiry date of an enterprise agreement (e.g. the *NTPS Nurses and Midwives 2018 - 2022 Enterprise Agreement* expires on 20 August 2022 and PIA to advance claims during future negotiations could not be proposed or taken until after that date).

Industrial Action taken before the expiry of an Enterprise Agreement can attract penalties of up to \$13,320 for an individual and \$66,600 for a corporation.

PIA is approved by the Fair Work Commission (FWC) after a secret ballot of all Members affected by the proposed PIA. The FWC may make an order to determine proposed industrial action is in fact protected or unprotected. The FWC can also suspend or terminate PIA if it considers the action will:

- endanger the life, personal safety, health or welfare of the population or part of it; or,
- cause significant damage to the Australian economy or an important part of it; or,
- the action is protracted and is causing, or is going to cause, significant economic harm to the employer or employees who will be covered by the agreement.

Unprotected Industrial Action.

Unprotected Industrial Action is any industrial action not taken in compliance with Part 3-3 of the *Fair Work Act 2009*. As mentioned above, significant penalties can be imposed on individuals and Corporations (i.e. Unions and Employers) who take unprotected industrial action outside the bargaining period for an Agreement. Likewise individual Members and Unions (as well as Employers) can face civil litigation and be sued for damages arising out of unprotected industrial action.

Further Information.

Members are reminded that taking protected industrial action and the process required before industrial action is taken is detailed and complex. ANMF NT Branch will likely utilise protected industrial action to advance claims when strategically appropriate during upcoming Enterprise Agreement negotiations. Any further questions about protected industrial action can be directed to ANMF NT Branch on 08 8920 0700 or info@anmfnt.org.au.