



# DECISION

*Fair Work Act 2009*

s.437 - Application for a protected action ballot order

**Australian Salaried Medical Officers Federation**

**v**

**Australian Capital Territory trading as ACT Public Sector**

(B2024/1071)

DEPUTY PRESIDENT ROBERTS

SYDNEY, 27 AUGUST 2024

*Proposed protected action ballot of employees of the Australian Capital Territory*

[1] This is an application by the Australian Salaried Medical Officers Federation (**ASMOF** or **Applicant**) made under s.437 of the *Fair Work Act 2009* (**Act**) for a protected action ballot order in relation to certain employees of the Australian Capital Territory (**ACT** or **Employer**).

[2] The matter was listed for hearing on 23 August 2024. At the hearing, the ACT raised a concern in relation to question 6 in the list of the proposed ballot questions. That question asks employees to endorse the taking of a form of protected industrial action relevantly described as “...an unlimited number of bans or limitations on answering or making telephone calls, responding to voicemails or responding to email.” Brief oral submissions were made in relation to this question. I am satisfied that the question is framed in a way that employees are capable of responding to it<sup>1</sup> and that it is sufficiently clear to enable the employees to understand the nature of the protected action that they are being asked to authorise.<sup>2</sup> Accordingly, the question will appear in list of questions to be balloted.

[3] On the basis of the material before me, including the declaration of Associate Professor Dr. Jeff Looi, setting out the steps taken by the ASMOF in bargaining with the Employer and the evidence to indicate that ASMOF has been, and is, genuinely trying to reach agreement with the ACT, I am also satisfied that there is a notification time in relation to the proposed agreement and that all of the requirements in s.443(1) of the Act have been met. I am satisfied that the application was provided to the employer and the ballot agent in accordance with s.440 of the Act.

[4] I have also had regard to the submissions of the parties and the evidence in the statement of Mr. Steven Linton, Director Industrial Relations, Canberra Health Services. I am satisfied that there are exceptional circumstances within the meaning of s.443(5) of the Act to justify a period of written notice referred to in s.414(2)(a) being longer than three working days in the case of some of the forms of protected industrial action specified in the proposed order. Pursuant to s.443(5), in relation to the protected action referred to in questions 9, 10 and 11 of the list of ballot questions, I am of the view that the period of written notice should be at least five (5)

working days. For the remaining forms of protected industrial action, the period of written notice shall be at least three (3) working days.

[5] The ballot is to be conducted by Democratic Outcomes Pty Ltd (CiVS). CiVS has been approved as an eligible protected action ballot agent under s.468A of the Act and consequently is authorised to conduct the ballot.

[6] For the purposes of s.443(3)(c) of the Act, the Commission has determined that the date by which voting is to close is 14 September 2024.<sup>3</sup> This also establishes the ballot period for the purpose of s.448A(2) of the Act.

[7] An Order has been separately issued in [PR778653](#).

[8] This matter will be assigned to another Member of the Commission to conduct the s.448A compulsory conciliation conference. That Member will issue an Order requiring the attendance of all bargaining representatives in the proposed enterprise agreement at the conference. It is likely that Directions will also be issued to ensure that the parties attend the conference ready to conduct meaningful negotiations.



DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR778690>

---

<sup>1</sup> *John Holland Pty Ltd v. AMWU* (2010) 194 IR 239 at [19].

<sup>2</sup> *Total Marine Services Pty Ltd v. MUA* (2009) 189 IR 407 at [38].

<sup>3</sup> This is 14 working days from the making of the Order.