



DECISION

Fair Work Act 2009

s.437 - Application for a protected action ballot order

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

v

Triple Zero Victoria

(B2026/1295)

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 28 SEPTEMBER 2026

Proposed protected action ballot of employees of Triple Zero Victoria – AEC ballot

[1] This is an application by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU** or **Applicant**) made under s.437 of the *Fair Work Act 2009* (**Act**) for a protected action ballot order (**PABO**) in relation to certain employees of Triple Zero Victoria (**Triple Zero** or **Employer**).

[2] On 24 September 2026, the Commission was advised that the Employer, in effect, did not object to the application in general terms, but raised objections regarding some of the proposed ballot questions. Namely the ‘combined’ form of some questions, the “ambiguous qualifiers” of others and the lack of sufficient precision. The Employer also stated that:

“Whilst the affected bargaining cohort consists of Support Office and Corporate Services Employees, many of the functions identified in the proposed questions support critical operational capability, incident management, workforce deployment, information technology systems, emergency communications infrastructure and organisational governance.”

[3] In relation to a number of ballot questions where this was said to be important, it was suggested by Triple Zero that the qualifiers, such as “unless operationally critical” were subjective and further contributed to uncertainty and ambiguity.

[4] Further, the Employer raised that the proposed 30-working day ballot period was “excessive”.

[5] I observe the Commission raised with the CEPU that there were inconsistencies with the employees to be balloted, and the CEPU subsequently amended the application addressing the Commission raised inconsistencies. The CEPU also rejected the objections raised by the Employer.

[6] Both parties were given an opportunity to provide further materials in relation to the objections raised, neither party sought to do so. In the circumstances, and noting the nature of the issues that arise, I have granted leave to amend the application to address the inconsistencies and otherwise decided to determine the matter on the papers without holding a hearing.

[7] On the basis of the material before me, including the declaration of Christopher John Ellery, Branch Assistant Secretary, setting out the steps taken by the CEPU in bargaining with the Employer and that it has been, and is, genuinely trying to reach agreement with Tripple Zero, I am 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.

[8] The ballot is to be conducted by the Australian Electoral Commission (AEC).

[9] 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 10 November 2026. Although the Employer sought, in effect, an earlier ballot closure date, the period set by the Commission is thirty (30) working days from the date of the Order. This is the minimum period required by the AEC to conduct a ballot of this kind. That is, given the nature of the ballot process (postal) and the requirements of the AEC, this is the period that enables the ballot to be conducted as expeditiously as practical. This also establishes the ballot period for the purpose of s.448A(2) of the Act.

[10] In relation to the ballot questions raised by the Employer these are expressed to be bans on undertaking particular work. They are also stated in relatively conventional terms. Noting the role of the Commission in relation to the consideration of ballot questions in an application of this kind,¹ this appears to be capable of being industrial action,² depending upon which employees are involved and what form of action is notified. The questions also state the nature of the proposed action in manner that would enable the employees to meaningfully respond to the ballot questions, and for reasons summarised below, this is sufficient for present purposes.³ Any risk beyond that associated with the questions as an underpinning for protected industrial action (PIA), such as the inclusion of the qualifiers, is at this stage at least, a matter for the CEPU.

[11] Given the basis of the Employer's concerns in relation to the operational and public interest considerations, it is appropriate that I say something about the bargaining scheme of the Act which is outlined in various decisions of the Commission including in *John Holland v "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union"* known as *the Australian Manufacturing Workers' Union (AMWU) and The Australian Workers' Union*,⁴ and by the Federal Court in *J.J. Richards & Sons Pty Ltd v Fair Work Australia*.⁵ In general terms, the function of the PABO is established by Part 3-3 of the Act. Essentially, a PABO is a necessary step for a bargaining representative to ultimately seek the capacity to take PIA in support of bargaining for relevant enterprise agreements. Further, the taking of PIA by both

¹ See generally *National Tertiary Education Industry Union v Curtin University* [2022] FWCFCB 204 at [54] and [55].

² Section 19(1)(b) of the Act and see the discussion in *Mornington Peninsula Shire Council v Australian Municipal, Administrative, Clerical and Services Union* [2017] FWCFCB 4740 at [48] to [50].

³ Ibid at [46].

⁴ [2010] FWAFCB 526.

⁵ [2012] FCAFC 53.

employees and employers, that is designed to advance claims and to persuade the other party to change their position, is part of that scheme. This must be undertaken in the context of the relevant party genuinely trying to reach an enterprise agreement.

[12] Whether any proposed industrial action becomes protected will ultimately depend on compliance with the statutory parameters including whether a relevant question is supported by the ballot,⁶ whether the action is notified in accordance with the requirements of the Act,⁷ and whether it is industrial action within the meaning of the Act.⁸ Further, an employer who is subject to threatened, impending or probable industrial action may seek to have such action suspended or terminated on various grounds including whether it endangers the life, the personal health or safety, or the welfare, of the population, or of part of it, or causes significant damage to the Australian economy, or an important part of it,⁹ or causes significant economic harm.¹⁰ Industrial action that is not PIA may be prevented.¹¹

[13] In relation to the operational and public interest concerns as might arise from any notified industrial action in this case, I would accept that depending upon the precise context and the form, duration and nature of industrial action, such concerns could indeed arise in this particular enterprise. However, no basis under the terms of s.437 and related provisions has been provided that would permit the Commission to deny the application on that basis.

[14] Accordingly, the potential impact of the proposed questions was not presently relevant. I observe that the Commission does not, in determining a PABO application, approve or disapprove of the proposed forms of industrial action beyond consideration of the ballot questions required by s.443(1)(a) and s.443(3)(d) of the Act. That is, the ballot questions must state the nature of the proposed industrial action. The word “nature” is one of high generality, and in context refers to the “character, kind or sort” of the industrial action. The proposed action specified in the question must be something that is capable of constituting “industrial action” within the meaning of the definition of that expression in s.19(1) of the Act.¹² I find that the questions concerned here do so.

[15] Further, consistent with the scheme of the Act, the ballot questions (if the PABO is issued and the ballot endorses the questions) set the broad nature of the potential PIA. The detail of what industrial action is to occur (within the parameters of the endorsed ballot questions), is provided when the applicant gives notice of the industrial action to the employer. This must meet the particular notice requirements of s.414 of the Act.

[16] An Order has been separately issued in PR814807.

⁶ Sections 437, 408 and 409 of the Act.

⁷ Section 414 of the Act.

⁸ Section 19 of the Act.

⁹ Section 424 of the Act.

¹⁰ Section 423 of the Act.

¹¹ Section 418 of the Act.

¹² *National Tertiary Education Industry Union v Curtin University* [2022] FWC 204 at [50].

[17] Pursuant to s.448A(1), the Commission must conduct a s.448A compulsory conciliation conference in this matter. The Commission 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.

The image shows a handwritten signature in black ink to the left of the official seal of the Fair Work Commission. The seal is circular with the text "THE SEAL OF THE FAIR WORK COMMISSION" around the perimeter. In the center of the seal is the Australian coat of arms, featuring a kangaroo and an emu flanking a shield, with a seven-pointed star above it. The word "AUSTRALIA" is inscribed on a banner below the shield.

DEPUTY PRESIDENT

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