



ORDER

Fair Work Act 2009
s.437 - Application for a protected action ballot order

Australian Nursing and Midwifery Federation

v

Western Health

(B2024/357)

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 4 APRIL 2024

Proposed protected action ballot of employees of Western Health

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 Australian Nursing and Midwifery Federation (**ANMF** or **Applicant**) is to hold a protected action ballot of employees of Western Health (**Employer**) described in clause 3 of this order.

2. NAME OF PERSON AUTHORISED TO CONDUCT THE BALLOT

The ballot is to be conducted by Vero Engagement & Voting Solutions Pty Ltd (**Agent**). The contact details of the Agent are:

Vero Engagement & Voting Solutions Pty Ltd
Unit 5, Ground Floor,
100 Railway Road, Subiaco WA 6008
Agent: Greg Mitchell

3. GROUP OR GROUPS OF EMPLOYEES TO BE BALLOTTED

In accordance with s.437(5) of the Act, the employees to be balloted are those employees of Western Health (other than those employed solely or predominantly in the provision of Public Mental Health Services which refers to the service, department, unit or program of the Employer rather than the duties of an individual employee) engaged as:

- a) Registered Nurses
- b) Registered Midwives
- c) Enrolled Nurses

- d) Trainee Enrolled Nurses
- e) Registered Undergraduate Students of Nursing or Midwifery
- f) Registered Enrolled Nurse Students
- g) Early Parenting Practitioners

and who will be covered by the proposed enterprise agreement and are members of, and are represented by the bargaining representative who is the Applicant for this protected action ballot order, or are a bargaining representative for himself or herself but is a member of the ANMF.

4. DATE BY WHICH BALLOT CLOSSES

The date by which voting in the protected action ballot is to close is 29 April 2024.

5. QUESTIONS

The questions to be put to voters in the ballot are:

In support of reaching an enterprise agreement with your employer, do you authorise the taking of protected industrial action against your employer separately, concurrently and/or consecutively, in the form of:

Following at least 120 hours' notice to the employer

- 1. A ban on providing information to management in relation to who is participating in protected industrial action.*
- 2. Employees will undertake stoppages of work to write enterprise bargaining campaign messages on the outside of employer provided vehicles and a periodic or indefinite ban on the use of employer provided vehicles to perform work unless enterprise bargaining campaign messages are written on the outside of the vehicle.*
- 3. Commencing and finishing duty at the rostered times unless overtime is approved by the employer, in writing, in advance.*
- 4. Delaying or restricting the performance of normal duties through a ban on the employer's uniform policy or dress code, for the purpose of engaging with media, staff, patients, visitors, residents and their families about the proposed agreement, with employees wearing, distributing and displaying ANMF campaign materials, such as t-shirts, badges, written communications and stickers in support of the proposed enterprise agreement.*
- 5. A ban on the completion of any paperwork or electronic forms in residential aged care other than that directly related to the documenting of resident care.*
- 6. A ban on recording of, or reporting on, ambulance offload times at emergency departments.*
- 7. Delaying or restricting the performance of normal duties by speaking to the media and*

participating in social media about the campaign during working hours having regard for s.141 of the Health Services Act.

8. *A refusal to collect, record, complete or document non-clinical/administrative information required by the employer eg. outcome measures, vehicle logbooks, statistical data, daily returns/bed movements, but excluding any reporting directly related to patient, client or staff safety.*
9. *A ban on the collection and/or entry of any data (that is not required by law to be entered into the patient record or related directly to patient or staff safety) and a refusal to record, collect or complete data required by the employer.*
10. *Industrial action in the form of a refusal to attend or participate in any management meeting unless fully back filled.*
11. *A refusal to implement any workplace or system change proposed by management, subject to the discretion of the ANMF Branch Secretary in circumstances where the Secretary is satisfied that if the change did not proceed, it may negatively impact on staff or patient safety.*
12. *Employees will undertake stoppages of work to display or use ANMF campaign materials, including but not limited to petitions, flyers, posters, stickers, postcards, balloons, video-conferencing backgrounds, digital avatars and/or props, video-conferencing backgrounds, either by electronic means (including but not limited to email) or by providing these in person, to media, staff, patients, clients, customers, visitors, residents and/or members of the public and/or refuse to work in areas where enterprise bargaining campaign materials are not on display*
13. *A ban on sending emails unless they contain the following text:*

‘Nurses and midwives have worked throughout the pandemic, while experiencing a casualisation of the workforce, and extraordinary difficulties recruiting and retaining staff.

The Victorian Branch of the Australian Nursing and Midwifery Federation is negotiating a new Enterprise Agreement with management on our behalf. We are asking for reasonable improvements to our working conditions, especially our take home pay, given our last wage increase was in December 2022, and like everyone, we have been experiencing the rising cost of living.’
14. *Taking the full period of all breaks (including meal breaks and rest/tea breaks).*
15. *Industrial action in the form of:*
 - a. *not working any overtime and/or any hours in addition to an employee’s rostered or contracted ordinary hours of work;*
 - b. *a refusal to be redeployed from one area to another area, unless such redeployment is with the agreement of the employee or the ANMF;*

- c. *the closure of beds per ward or unit in the event that all ward/unit rosters, including leave replacement, are not maintained.*

Following 7 calendar days' notice to the Employer

16. *Attending events in support of the proposed enterprise agreement and/or the ANMF campaign, during working hours.*

17. *The closure of up to one in every four (4) operational beds (i.e. beds that were open as at the day before the commencement of the industrial action) and, subject to exemptions [see note 1a and 1b below] a refusal to admit to those beds.*

Note 1a: Exemptions will apply to neo-natal and paediatric patients, haemodialysis patients, maternity patients, oncology patients, palliative care, terminations of pregnancy, intensive care units, coronary care units, high dependency patients.

Note 1b: a residential aged care bed in which the resident is absent while admitted to hospital will not be subject to closure.

18. *The refusal to re-open beds (i.e. beds that were closed as at the commencement of the industrial action) and, subject to exemptions [see note 1 above], a refusal to admit to those beds.*

19. *The closure of an additional two (2) beds per ward or unit to be designated as emergency beds and admitted into only-for-emergency admissions [see note 2 below]. Emergency admissions will be allowed provided that such admissions will be into the designated emergency beds.*

Note 2: Emergency admissions are those whose condition would deteriorate significantly within 24 hours if their admission did not occur, subject at all times to the decision of the local campaign bed management committee approval [see note 3 below].

Note 3: The local campaign bed management committee is a campus specific committee established with the agreement of senior nursing and midwifery management and ANMF Job Representatives to consider emergency admissions.

20. *Outpatient nurses and midwives banning one in four (4) new referrals to outpatient clinics and one in four review spots/appointments.*

21. *Subject to Note 4, Domiciliary nurses, including post-acute care, hospital in the home nurses, HARP and district nursing banning one in four new referrals.*

Note 4: Exemptions will apply to neo-natal and paediatric patients, haemodialysis patients, maternity patients, oncology patients, palliative care, and termination of pregnancy.

22. *Subject to Note 5, Theatre nurses to ban one in four (4) elective cases.*

Note 5: Exemptions will apply to neo-natal and paediatric patients, and terminations of pregnancy.

23. *Aged Care Assessment Nurses and Community Health Nurses refusing to accept one in three (3) referrals from public sector health facilities and banning clerical and administrative duties including the completion of statistics.*
24. *Single and/or consecutive work stoppages each of up to four (4) hours duration including such stoppages to travel for and to attend stop work meetings.*
25. *Stop work for periods of up to four (4) hours, save where such action would endanger the life, the personal safety or health, or the welfare of workers and patients, for the purpose of holding stop-work meetings as directed by the Australian Nursing and Midwifery Federation.*

Yes [] No []

6. EMPLOYER TO PROVIDE LIST OF ELIGIBLE EMPLOYEES

- 6.1 The Employer is to provide to the Agent (admin@verovoting.com.au) by 4:00pm on the third 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:
- 6.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named “Western Health – 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	Employee ID
Column 2	Surname
Column 3	First Name
Column 4	Middle Name
Column 5	Date of Birth
Column 6	Work Email Address
Column 7	Private Email Address
Column 8	Mobile Phone Number

- 6.3 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**).

- 6.4 The Employer may provide the list of employees to the Agent by way of encrypted or password protected email that is accessible by the Agent.

7. APPLICANT TO PROVIDE LIST OF ELIGIBLE MEMBERS

- 7.1 The ANMF is to provide to the Agent by 4:00pm on the third 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:

- 7.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named “ANMF – Western Health – 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	Surname
Column 2	First Name
Column 3	Middle Name
Column 4	Date of Birth
Column 5	Work Email Address
Column 6	Private Email Address
Column 7	Mobile Phone Number
Column 8	ANMF Membership Number (if applicable)

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

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

8. VOTING METHOD

- 8.1 The ballot is to be conducted by electronic voting and must take place in compliance with the Act, the Regulations and this order.

- 8.2 Pursuant to s.450 of the Act, the Agent is to conduct the protected action ballot in accordance with the following directions.

Timetable

8.2.1 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.

8.2.2 The date by which voting in the protected action ballot is to close is 29 April 2024.

Voting method

8.2.3 The Agent will design a voting website on a secure server which will allow eligible voters to vote in the ballot.

8.2.4 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.

8.2.5 Immediately 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.

8.2.6 The Agent will issue the Instruction Sheet to each employee's email address, where provided.

8.2.7 The Agent will send an SMS to any mobile number for that eligible voter, where a mobile phone has been provided.

8.2.8 For any eligible employees without an email address or mobile phone number, the Agent will send the Instruction Sheet by mail to that employee's home postal address.

8.2.9 For any eligible voters who are identified in the list provided by the employer as on leave for the whole period from the date of the order to the date the ballot closes, and who do not have a home email address or mobile phone number, the agent will send the Instruction Sheet by mail to that person's home postal address.

8.2.10 The Agent will ensure the voting website will only be accessible for voting in the ballot by eligible voters.

8.2.11 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

8.2.12 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.

9. FINALISING THE LIST OF VOTERS

9.1 The Agent shall compile a roll of voters eligible to vote in the protected action ballot by removing from the List of Eligible Employees prepared by the Employer in compliance with clause 6 of the order:

(a) all employees not included in the List of Eligible Members prepared by the ANMF in compliance with clause 7 of the order; and

(b) all employees who are identified in the List of Eligible Employees as having provided a Bargaining Representative Nomination Form nominating a bargaining representative other than the ANMF, even if the employee's name is included in the List of Eligible Members prepared by the ANMF.

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

10. TIMETABLE FOR BALLOT AND COMPILATION OF LIST OF VOTERS

10.1 The Agent will compile a timetable in accordance with the Act and the Directions outlined in paragraphs 8.2.1 and 8.2.2 of this order, to be sent to the parties.

10.2 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.

11. INFORMATION

11.1 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.

11.2 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. For any eligible employees without an email address or mobile phone number, the Agent will send the notice to employees by mail to that employee's home postal address.

11.3 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; and
- 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.

12. PROVISION OF INFORMATION AND ASSISTANCE TO AUTHORISED BALLOT AGENT

- 12.1 The 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.
- 12.2 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.
- 12.3 The Employer shall allow access to the voting website from all employees' places of work and accommodation (if applicable) by whitelisting the site across the Employer's internet network.
- 12.4 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.

13. RESULTS

- 13.1 The Agent may, on request, report to either the Employer or the ANMF the participation rate.
- 13.2 The Agent shall report the results of the protected action ballot as soon as practicable after the close of voting to the ANMF, the Employer and the Fair Work Commission.

14. NOTICE PERIOD FOR PROPOSED INDUSTRIAL ACTION

- 14.1 Pursuant to s.443(5) of the Act, the period of written notice for proposed industrial action specified in questions 16 to 25 inclusive is extended to 7 calendar days. The period of written notice for proposed industrial action specified in the remaining questions shall be 120 hours.

15. DATE OF EFFECT

This order commences on 4 April 2024.



DEPUTY PRESIDENT

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