



Conciliation conference orders

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* amends the *Fair Work Act 2009* (the Act) to address unintended consequences of the provisions of the Act that require bargaining representatives to participate in a compulsory conciliation conference once a protected action ballot order (PABO) has been made. As noted in *CEPU v Nilsen (NSW) Pty Ltd* [2023] FWCFB 134, a bargaining representative's non-compliance with an order to attend a section 448A conference could render any subsequent industrial action unprotected – for both those represented by the complying and non-complying bargaining representatives.

What has changed?

Previously, the Act required all employee bargaining representatives for an enterprise agreement to attend a compulsory conciliation conference for subsequent employee claim action to be protected. The amendments provide that only the bargaining representative/s who applied for a PABO must attend the conference for subsequent employee claim action to be protected.

The amendments also clarify that an employer organising or engaging in employer response action, and their bargaining representatives covered by the PABO, must attend the conciliation conference for subsequent employer response action to be protected.

What do these changes mean?

The amendments address an unintended outcome of a bargaining representative either intentionally or unintentionally removing the ability for employees to take protected industrial action.

The changes will mean that non-attendance at a conciliation conference by a bargaining representative who did not apply for the PABO will no longer result in any subsequent industrial action being unprotected. However, employees' bargaining representative/s who applied for the PABO must attend the conciliation conference in order for them to take the protected industrial action voted up under the Protected Action Ballot. The changes also clarify that employers and their bargaining representatives still need to participate in the compulsory conciliation for any subsequent employer response action to be protected.

When will these changes come into effect?

The changes commenced on 15 December 2023.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>