

Workplace Relations Act 1996

How to apply for an order to stop or prevent industrial action

Applying for an order

Q. When can I apply for an order?

When you can apply to the Australian Industrial Relations Commission (the AIRC) for an order is explained in *A guide to employers' rights in relation to industrial action, freedom of association and right of entry* (the guide).

Q. How do I apply for an order?

To obtain an order to stop or prevent industrial action (a 'section 127 order'), you need to lodge an application with the Australian Industrial Registry (AIR).

Contact details for the AIR are listed in the Guide.

Further information and copies of the appropriate application form can also be found at the AIRC's web site:
<http://www.airc.gov.au>

To obtain an order, the industrial action you wish to stop or prevent must relate to one of the following (your application should specify which):

- an industrial dispute; or
- negotiations or proposed negotiations for a federal certified agreement; or
- work that is regulated by a federal award or certified agreement.

Your application should also set out exactly what order you would like the AIRC to make, and the grounds upon which you are seeking the order.

When setting out the terms of the order you are seeking, and grounds for the application, you should identify those who are directly affected or likely to be directly affected by the industrial action. You should also explain the effect the industrial action is having.

If you are not sure about whether you may seek an order, or about what should be included in your application, you should seek professional advice.

Setting a date for the hearing

Q. How will I know when my application will be heard?

The AIRC will set a time, date and place to hear your application.

A copy of your application, and a completed notice of hearing will be provided to you.

Notifying other parties

Q. Do I need to serve the notice of hearing on the other parties?

Yes. You are then required to serve both the application and the notice of hearing on:

- each party to the industrial dispute who is directly affected or likely to be directly affected by the industrial action (if any); or
- each party to the negotiation or proposed negotiation of a federal certified agreement (if any); or

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- each union, employer organisation or person bound by the award or certified agreement regulating the work to which the industrial action relates, that is directly affected or likely to be directly affected by the industrial action.

Notice can be served by hand or by registered post. You should make sure you keep a record of when and how you served the notice on the other parties.

Q. How do I prepare for a hearing?

You will need to be able to show that the industrial action is either occurring or is threatened, impending or probable.

You should seek to obtain as much evidence to support your case as possible.

For example, you should obtain written statements from anybody who you think has evidence to support your case. (Written evidence can be in the form of a statutory declaration or can be sworn by a witness during proceedings.)

Q. Do I need a lawyer?

No. Whether or not you choose to have a legal or industrial representative is your choice.

However, if you are unfamiliar with the procedures of the AIRC, professional advice is strongly recommended.

Q. What happens during a hearing?

Once in the hearing, you put your case to the AIRC by presenting your argument and evidence. This is a formal presentation in which you try to show that the terms of section 127 of the *Workplace Relations Act 1996* have been met.

It is most important that you produce reliable and convincing evidence about the industrial action. This may include letters or membership bulletins from a union, evidence from witnesses who know about the details and effects of the industrial action, and so on.

The evidence should be able to stand up to close examination.

The other party then gets the opportunity to present their case.

Once the AIRC has heard the evidence, it will decide whether to grant an order.

Q. How quickly will the AIRC make a decision?

The AIRC is required to act quickly. However, it will not usually make the decision on the spot. The AIRC must decide the case fairly, considering the cases presented by each side.

This leaflet is a guide to the law only. For more information on section 127 orders, contact the Australian Industrial Registry in your State or Territory. Contact details are listed in the guide.

For copies of *A guide to employers' rights in relation to industrial action, freedom of association and right of entry*, phone 1300 363 471 (for the cost of a local call).