



REASONS FOR DECISION

Fair Work Act 2009

s.418 - Application for an order that industrial action by employees or employers stop etc.

The Northern Territory of Australia, The Office of the Commissioner for Public Employment, Northern Territory Government and Department of Corrections, Northern Territory Government

v

United Workers' Union
(C2026/3926)

COMMISSIONER RIORDAN

SYDNEY, 20 MARCH 2026

Application for an order to stop etc (unprotected) industrial action – Application dismissed – Reasons for Decision

[1] This decision relates to my earlier decision today in [\[2026\] FWC 911](#).

[2] For the sake of brevity and efficiency, I have not summarised all of the evidence and submissions of the parties in this decision.

Reasons for Decision

[3] It is not in dispute that every employee covered by the *Fair Work Act 2009* (**the FW Act**) has the opportunity to take protected industrial action (**PIA**) as long as the provisions and processes of the FW Act have been complied with by those employees.

[4] In the Protected Action Ballot Order (**PABO**) decision issued by Deputy President Hampton on 10 February 2026, the Deputy President stated:

“[2] On 10 February 2026, the Respondent advised that it did not object to the application subject to confirmation of there being an extended notice period of six (6) working days in relation to ballot questions five, six, seven, eight and nine (5-9) of the proposed forms of industrial action. Additionally, the Respondent requested a commitment from UWU that any messaging in relation to “writing or attaching non-permanent/removable messages” will not “cover, obscure, or otherwise interfere with [Northern Territory Correctional Services] decals or other safety and identification elements”. The Respondent further requested the following commitment be confirmed at the end of the ballot questions:

“It is not the intention of the United Workers Union or its members to engage in industrial action which would (or would threaten to) endanger the life, personal safety or health, or the welfare of the population or a part of it. This includes

conduct directed at individual employees, and any damage to Northern Territory Public Sector property.”

[3] The UWU provided these commitments, and in effect, accepted that there were relevant exceptional circumstances and sought to amend the notice period relevant to the nominated forms of proposed industrial action.”¹

[5] I am satisfied and find that this commitment was given by the UWU and formed part of the PABO ballot. As a result, the UWU is required to comply with this ‘safety commitment’. I have taken this into account.

[6] The Applicant referred to the agreed Alice Springs Correctional Centre (ASCC) Safe Staffing Model (**the Model**), which was agreed and signed by the parties in May 2020. Although the structure and size of the ASCC has changed since the Model was signed, it is not in dispute that the parties continue to apply this Model. The Commissioner for Public Employment stated in correspondence to the UWU that the daytime staffing numbers, in accordance with the Model, requires 52 Prison Officers to be employed on day shift in order for the safe operation of the ASCC. Commissioner Varley testified that 42 Prison Officers are required to operate the prison in lockdown. With respect, the agreed Model does not confirm that statement. In fact, the Model states that: “*Lockdown procedures may be initiated after assessment if minimum Staffing levels are not maintained*”.

[7] For its part, the Union submitted that 42 Prison Officers are required to run the facility whilst operating at its optimum level. The unchallenged evidence of Mr Peter Thomson, Senior Correctional Officer, is that the ASCC regularly runs with only 36 officers whilst maintaining the full suite of services for prisoners. Mr Thomson further testified that the ASCC has operated in lockdown mode with only 9 officers present during a shift.

[8] Regarding the unchallenged evidence of the Mr Thomson, I note that in the Full Bench decision of *INPEX Australia Pty Ltd v The Australian Workers’ Union*,² it was stated that:-

*“[29] The Commission is not a court. It is not bound by the rules of evidence.⁶ It is required to perform its functions and exercise its powers in a manner that is quick, informal and avoids unnecessary technicalities.⁷ But when the Commission makes a finding of fact, it must proceed by reference to rationally probative material. ⁸ That material may include, inter alia, evidence or, in an appropriate case, submissions. **For example, it may be appropriate for a finding of fact to be made on the basis of an unchallenged submission made by one party, particularly when the other party is legally represented.**”*

(My emphasis)

[9] Further, a Full Court of the Federal Court of Australia stated in *Ashby v Slipper*³ that:-

*“The second aspect, critical to this appeal, relates to the weight or cogency of the evidence: that is, as a general proposition, **evidence, which is not inherently incredible and which is unchallenged, ought to be accepted:** Precision Plastics Pty Limited v Demir [1975] HCA 27; (1975) 132 CLR 362 at 370-371 (per Gibbs J, Stephen J*

agreeing, Murphy J generally agreeing). The evidence may of course be rejected if it is contradicted by facts otherwise established by the evidence or the particular circumstances point to its rejection.”

(My emphasis)

[10] In accordance with the above authorities, I am satisfied and find that the Mr Thomson’s unchallenged evidence should be believed. I regard Mr Thomson to be a witness of credit. I have taken this into account.

[11] Both parties accepted that today’s industrial action, even with the mitigated provision of UWU members during the 12-hour stoppage, would result in the ASCC being forced into lockdown for the duration of the 12-hour shift. The Applicant argued that such a scenario may prove to create an unsafe situation due to the possible unrest of the prisoners being locked up, in reality, for some 36 hours.

[12] Under cross-examination, Commissioner Varley referred to a riot at the Darwin Correctional Centre in May 2020, where a subsequent report concluded that prolonged lockdowns and the ongoing restrictions associated with Covid, including the denial of visitation rights, resulted in the prisoners becoming frustrated, which apparently caused the subsequent riot. Commissioner Varley could not provide any evidence in relation to the frequency or length of any lockdowns prior to the riot in 2020.

[13] Further, it was not in dispute, that lockdowns are frequently used within the Corrections Industry in a plethora of situations. I do not accept the submission by the Applicant that there is a real risk of serious injury to prisoners and staff as a result of today’s industrial action. There is no evidence before the Commission which would identify that a lockdown has resulted in any serious injury to prisoners or staff or resulted in any recent riots as a result of the regular lockdowns which occur within the ASCC.

[14] I was surprised by the lack of evidence supplied by the Applicant in relation to the intricate workings of the ASCC. Whilst I was grateful for the evidence of Commissioner Varley, by his own admission, he did not understand or have intricate knowledge of the operation of the ASCC. For reasons unbeknown to the Commission, the superintendent of the ASCC was not called as a witness. As a result, I have no option but to accept the unchallenged evidence of Mr Thomson in relation to the safe operation of the ASCC when it is in lockdown and the capacity of the reduced number of Prison Officers to undertake a rolling lockdown which will provide prisoners with the capacity to be freed from their cells for an appropriate period of time.

[15] I also took note of the fact that the weather forecast for Alice Springs today was a mild 26/27 degrees Celsius. Whilst the application suggested that this period of time is the hottest part of the year in Alice Springs, which could allude to additional safety and health concerns, I do not accept that today’s predicted temperature is anywhere near that description or will have any adverse effects on the prisoners.

[16] In relation to the safety commitment given by the UWU to Deputy President Hampton, I am satisfied and find that it is not the intention of the UWU or its members to endanger the

life, personal safety or health, or the welfare of the population or a part of it. The Collins English Dictionary identifies the word 'intention' to mean: "*a purpose or goal; aim*".

[17] The aim of any PIA is to influence the other party to agree to the demands of the party taking the action. The UWU submitted that it is never the intention of the Union to endanger the life, personal safety or health, or the welfare of the population or a part of it. That is not to say that such an outcome is not possible during a period of PIA. If the Applicant had concerns that any industrial action posed such a risk, then they were obligated to raise this concern during the PABO hearing before Deputy President Hampton. As it stands, the commitment given by the UWU which was accepted by the Applicant before Deputy President Hampton, was that they would not intentionally embark on an industrial campaign to deliver that outcome. As a result, I am satisfied and find that the UWU has complied with the commitments that it gave Deputy President Hampton, and that the proposed 12-hour stoppage was a question that was approved by the UWU members during the PABO ballot. Therefore, the proposed industrial action is 'protected'.

Conclusion

[18] For the reasons stated above, I am satisfied and find that today's 12-hour stoppage being undertaken by the UWU at the ASCC is protected industrial action.

[19] As a result, the application cannot succeed and is therefore dismissed.

[20] I so Order.

COMMISSIONER

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¹ [\[2026\] FWC 426](#).

² [\[2021\] FWCFB 1038](#).

³ [2014] FCAFC 15.