

Employment Conditions Procedure - Industrial Action

Section 1 - Purpose

(1) This procedure supports the Employment Conditions Policy and sets out information in relation to protected industrial action take at Charles Sturt University (the University).

Scope

(2) This procedure applies to all University employees.

Section 2 - Policy

(3) This procedure supports the [Fair Work Act 2009](#).

Section 3 - Procedure

(4) This procedure has been developed meet the requirements of the [Fair Work Act 2009 \(the Act\)](#) in relation to protected industrial action and to accommodate the obligations of the University to staff, students and the wider community during periods of industrial action.

(5) The University recognises that its employees have the right to take lawful industrial action in accordance with [the Act](#). The University also supports those employees who wish to continue to work when their colleagues are on strike or otherwise engaged in lawful industrial action.

(6) Generally during industrial action, all University campuses will remain open for normal operating hours and work will be available for all employees to attend work. In exceptional circumstances, the University may need to close part or all of a building where there are concerns related to health, safety and security.

(7) In accordance with [the Act](#), employees will not be paid for any period that they participate in industrial action, and employee's will not have their pay deducted if they attend work and perform their full duties.

Protected industrial action

(8) In accordance with [the Act](#), employees will not be harmed or disadvantaged in their employment because they have participated in protected industrial action. However, unprotected industrial action exposes employees to the possibility of penalties both at common law and under [the Act](#).

(9) Industrial action is only protected if it is consistent with section 413 of [the Act](#); in particular that it occurs after the nominal expiry date of a workplace agreement (ss 413(6), 417(1), after the industrial action has been authorised by a ballot, and following at least three days written notice to the employer of any particular industrial action (s 414(2)). The protection ceases when the bargaining period ends.

(10) Protection from civil liability under this procedure and [the Act](#) does not include civil wrong (e.g. assault or

personal injury, obstructing, besetting or the interference with free passage at the workplace or public road, defamation, damage or theft of property).

Types of industrial action

(11) Types of industrial action include strikes, bans and stop work meetings. The [Fair Work Act 2009](#) defines industrial action in s19 as any action of the following kinds:

- a. the performance of work by an employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work
- b. a ban, limitation or restriction on the performance of work by an employee or on the acceptance of or offering for work by an employee
- c. a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees who attend for work
- d. the lockout of employees from their employment by the employer of the employees.

(12) It does not include action by employees that is authorised or agreed to by the University or action by an employee if the action was based on a reasonable concern by the employee about an imminent risk to their health or safety.

Strikes

(13) A strike is a collective withdrawal of labour, of varying duration, during which employees refuse to perform all work.

Bans

(14) Work bans include staff refusing to perform certain duties. The bans commonly include:

- a. recording or transmitting of assessment results
- b. participation on work allocation meetings
- c. working overtime
- d. communicating with senior staff of the University
- e. involvement in other institution specific programs or initiatives
- f. work outside of business hours, and
- g. use of specific information and communication systems.

(15) Bans are a form of industrial action under the [Fair Work Act 2009](#).

Stop work meetings

(16) An authorised stop work meeting may take place by agreement between the University and the relevant union/s or a group of employees. The University may sometimes find it convenient to authorise a stop work meeting, for example to allow a union to recommend a new Enterprise Agreement to employees or to lift industrial action. A meeting like this does not constitute industrial action. Likewise, a meeting held during a lunch break or out of ordinary hours would not constitute industrial action.

(17) An unauthorised stop work meeting is effectively a short strike, and time spent at a stop work meeting that would normally be work time must be unpaid (s470(1) of the [Fair Work Act 2009](#)).

Picket Lines

(18) A picket line is not in itself industrial action for the purposes of [the Act](#) and is not a protected industrial action. Employees who absent themselves from ordinary duties to attend a picket line are treated as being on strike.

(19) Employees wishing to cross a picket line to attend work, either on foot or in a vehicle, must not be prevented from doing so by the conduct of the picketers.

(20) Drivers of motor vehicles must not attempt to speed or drive aggressively through a picket line and should under no circumstances drive their vehicle in a way that threatens or causes harm or injury to any person.

(21) During any period of industrial action, staff not engaging in lawful industrial action should make every reasonable effort to attend the campus and/or work in accordance with their usual work arrangements. If staff are unable to safely attend campus because of picket lines, the employee should report to their supervisor or manager, by the most appropriate means available, as soon as possible. The University will monitor the behaviour of picket lines and will attempt to ensure that unreasonable behaviour is minimised or eliminated.

(22) Except as at clause (21), should any employee, whether a member of the union calling for the industrial action or not, take a personal decision not to cross a picket line, their absence will be considered as supporting the industrial action.

(23) Employees who picket the University are not protected from civil liability if they engage in a civil wrong, even if the picketing is part of a lawful industrial action (e.g. a strike).

Payment during industrial action (s 470 and s 471)

(24) The University will comply with the [Fair Work Act 2009](#) provisions in relation to payment of employees in relation to industrial action; it is unlawful to pay employees and unlawful for employees to accept payment during periods they are taking industrial action, other than in cases of partial work bans (s 470).

(25) Where industrial action takes the form of partial work bans (s 471), the University may either:

- a. reduce payments in proportion to the amount of time that the employee would usually spend performing that task during the day (s 471(1)),
- b. refuse to accept the performance of any work by the employee(s) engaged in the partial work ban and not make any payment to the employee(s) for the period of the bans (s 471 (4)(c)), or
- c. take no action (s 471 (8)).

(26) Where it is proposed to reduce pay, or to not pay at all, the University will provide prior written notice to all affected employees. If it is intended to reduce the employees' pay then the notice will include the proportion by which it is intended to reduce their payments.

(27) For staff other than those with a roster, salary calculations and normal working hours for the purpose of this procedure shall be based on a five day week. For the purposes of calculating the salary forfeited by an employee, a day's salary constitutes one fifth of their weekly rate of salary.

Leave during industrial action

(28) Employees must not participate industrial action while on paid leave. Employees intending to participate in industrial action must reverse any prior leave arrangements.

(29) Supervisors must ensure that operational requirements continue to be met and that staff who are not participating in industrial action undertake their usual work or are absent on approved leave.

(30) If a leave arrangement is made and approved correctly and well in advance of the industrial action, the arrangement should not be cancelled. Prior arrangements to take flexi time or some form of time in lieu may need to be cancelled. If the supervisor does not wish to cancel such an arrangement they should satisfy themselves that the arrangement was made well in advance of the industrial action, will not impede operational requirements being met and is in accordance with University policies.

(31) In other cases, supervisors should not approve any form of absence from work, including working from home arrangements, leave applications, time in lieu arrangements, rostered days off and other short term leave unless the supervisor is satisfied of the following:

- a. operational requirements will be met
- b. the proposed arrangement is not designed to avoid obligations to attend campus for work during periods of industrial action, and
- c. sick leave applications must be supported by a medical certificate.

Responsibilities of employees and supervisors

(32) Unless they are participating themselves in the industrial action, supervisors are responsible for minimising any disruption to the normal work of the University during periods of industrial action. This includes:

- a. advising other staff of their rights and responsibilities
- b. advising students of teaching and other arrangements during a period of industrial action
- c. ensuring that employees they supervise are correctly paid during periods of industrial action, and
- d. reporting as directed on any aspect of the industrial action to the Executive Director, People and Culture.

(33) Employees are responsible for advising the University whether they participated or are participating in industrial action.

Superannuation during strike periods

(34) The University will comply with superannuation legislation in relation to employee absences during industrial action; accordingly, no employee or employer contributions will be remitted to a superannuation fund on behalf of employees for the period they are on strike.

(35) Employees will have the option of maintaining both employee and employer superannuation contributions for the period of the strike, but the option to maintain employee contributions only will not be available.

Misconduct and/or serious misconduct

(36) Employees should report to their supervisor any cases of alleged misconduct and/or serious misconduct arising during a period of industrial action. This includes instances of verbal abuse, harassment, threats, insults, assault or personal injury, obstruction, deliberate interference with free passage, damage or theft of property, or being ostracised as a result of having crossed a picket line.

(37) In addition to any civil action that may be taken, the University may investigate cases of alleged misconduct and/or serious misconduct and take any disciplinary action against a staff member or student who breaches this procedure.

Section 4 - Guidelines

(38) Nil.

Section 5 - Glossary

(39) Nil.

Section 6 - Document Context

Compliance drivers	Fair Work Act 2009
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