



## **"Blatantly aggressive strike action" - ongoing waterfront Protected Industrial Action**

- Published on September 27, 2021



### **Paul Zalai**

Director, Freight & Trade Alliance (FTA) / Secretariat, Australian Peak Shippers Association (APSA) / Director, GSF

[72 articles](#) Following

Further to recent member notices, incredibly difficult times lie ahead with the likelihood of increased COVID-19 cases in Sydney / Melbourne operations ... rubbing salt into the wounds, protected industrial action (PIA) is being ramped up at Patrick container terminals nationally.

As quoted in today's Australian Financial Review article titled [Port strikes threaten to cripple Christmas](#) :

*Paul Zalai, director of the Freight & Trade Alliance, said if the latest action got to the point experienced last October "then it will have devastating impacts again".*

*"Throw the COVID situation on top of protected industrial action, on top of the challenges we're facing in international shipping and a high volume time in import and export commodities – we just can't afford to have stevedores shut down every few days."*

In a hard-hitting media statement released this morning (27 September 2021), Patrick CEO Michael Jovicic said:

*"The MUA's actions are frankly bewildering. It seems to have completely lost the plot. This blatantly aggressive strike action demonstrates that it has no regard for the suffering of everyday Australians who have felt the impact of COVID-19 lockdowns, job losses and restrictions over the past 18 months."* - [READ MORE](#)

## **PROTECTED INDUSTRIAL ACTION (PIA)**

Employees and employers can only take PIA when they are negotiating on a proposed enterprise agreement (EA). The main importance of industrial action being protected is that it gives immunity from civil liability under State or Territory law (*unless that action is likely to involve personal injury or damage, destruction or taking of property*).

## **PIA SUSPENSION OR TERMINATION**

The Fair Work Commission (FWC) can make an order to suspend or terminate protected industrial action on its own initiative, or on application by prescribed entities if the action has *threatened, is threatening, or would threaten*:

- to endanger the life, personal safety, health or welfare of the population or part of it; or
- **to cause significant damage to the Australian economy or an important part of it**

## **EVIDENCE OF ECONOMIC IMPACTS**

The lack of support from several key industry bodies has been incredibly disappointing.

The industrial action in the last quarter of 2020 cost importers and exporters in excess of \$330m in shipping line 'Port Botany Congestion Surcharges' that were implemented by shipping lines within days of each other in response to the crisis.

In addition, other costs associated with vessel by-pass included return of goods to Sydney and impacts on exporters with reduced vessel capacity.

The Australian Peak Shippers Association (APSA) made a submission to the Australian International Trade and Transport Industry Development Fund (AITTIDF) to examine economic impacts of disruptive events such as industrial action. The aim of this was to support industry should matters need to go to the FWC and for broader advocacy for IR reform.

APSA received a response that the submission was not approved and that all funds had been exhausted. Disappointingly, our repeated requests for feedback continue to be denied – refer [HERE](#).

APSA has since reached out to Shipping Australia to see if they would support a project along the lines of our AITTIDF submission, potentially with alternate funding. This again was not supported.

Perhaps shipping lines are comfortable in their ability to recover their costs via surcharges.

Other industry bodies are yet to respond to the suggested collaboration on this matter.

## **CURRENT STATUS OF PIA**

With the exception of Patrick, it has been welcome news that all Australian container stevedores have finalised their EAs during the course of 2021.

As members will also recall, a temporary reprieve from PIA at Patrick in October 2020 was experienced when the threat of a hearing from the FWC resulted in continued EA negotiations. Following the agreed three month period of suspended PIA activity, a resumption of disruption directly associated with the PIA has again significantly affected international trade operations since June this year.

The focus of the Freight & Trade Alliance (FTA) and APSA advocacy was on the PIA affecting Port Botany operations that had devastating effects on regional exporters.

In July 2021, the PIA at Patrick in Port Botany resulted in the stevedore closing most rail windows for regional NSW customers forcing freight to be double handled through third party Sydney metropolitan intermodal terminals, with the containers subsequently being delivered to the port by road. This type of congestion and uncertainty caused shipping lines to reevaluate Sydney and how they price and offer available equipment and space. Some shipping lines during this period omitted Sydney with multiple vessels a month because of ongoing congestion.

Between four exporters interviewed during our [case study](#) (FTA/APSA MEMBER LOGIN REQUIRED) , a reported A\$495,000 was paid in double handling and staging costs over a three week period.

The FTA / APSA [media campaign](#) focussed on Port Botany's operations with mixed results. Whilst a positive outcome has resulted in an extended period of time free of PIA at Botany, it has simply deferred the problem to Patrick container terminals in Brisbane, Fremantle and Melbourne.

We also note with concern, last week's notice of resumption of PIA at Patrick Port Botany - refer [HERE](#) (FTA/APSA MEMBER LOGIN REQUIRED)

## **FEDERAL GOVERNMENT RESPONSE**

FTA/APSA sent [formal correspondence](#) to the Attorney General on 16 July 2021 seeking intervention to ensure port operations are treated as an essential service with permanent change to industrial relation law to ensure our trade gateways remain unimpeded.

As an interim measure, FTA/APSA request that the Federal Government make an application to the FWC to terminate PIA currently being undertaken at Patrick ports nationally noting section 424 of the Fair Work Act, allows the FWC to make an order suspending or terminating protected industrial action if it is satisfied that the action has threatened, is threatening, or would threaten to cause significant damage to the Australian economy or an important part of it.

On 20 September 2021, FTA/APSA received a [formal response](#) from the Attorney-General referring to avenues via the FWC to suspend or terminate PIA, noting applications are “*almost exclusively*” brought by either party to a particular dispute or a third party directly impacted by the industrial action, as they are usually best placed to provide necessary evidence to support the application. The Attorney-General also noted no applications are before the FWC nor has any application been made for assistance in conciliating bargaining disputes.

The Attorney-General disappointingly did not address the fact that the FWC can make an order to suspend or terminate protected industrial action on its own initiative or on application by a relevant Minister.

Perhaps a convenient omission for an issue too difficult to address.

## **NEXT STEPS**

This looks like being a saga that will stay with us for a very long time with EAs up for renewal every three years.

Clearly our federal and state governments do not want to intervene purely based on the threat of economic harm and without sufficient evidence to document the potential impact on the international trade sector.

APSA has received legal advice in terms of making a **Section 424 application to the FWC** indicating that as a representative body and not directly impacted by the PIA, it would not be successful.

**The advice recommended such an application would have to be made by businesses (*or a collective of businesses*) directly affected.**

APSA will elaborate with further member updates, ongoing media commentaries and focussed advocacy activity in an aim to minimise the adverse impacts of port disruptions.

In the interim, for further detail, please contact me direct at [pzalai@FTAlliance.com.au](mailto:pzalai@FTAlliance.com.au)