

Form F24C – Declaration in relation to termination of an enterprise agreement after the nominal expiry date

[Fair Work Act 2009](#), s.225; [Fair Work Commission Rules 2024](#), rule 46 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission for termination of an enterprise agreement under Part 2-4 of the [Fair Work Act 2009](#).

I,	Simon Lutton
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[insert name of person making the declaration]

Level 4, 132 Albert Road

[insert postal address of person making the declaration]

South Melbourne

Victoria

3205

[insert suburb]

[insert State or Territory]

[insert postcode]

Executive Director, Australian Federation of Air Pilots

[insert occupation of person making the declaration]

declare that:

Part 1 – Preliminary

1.1 What is the name of the Applicant for termination of the enterprise agreement?

Legal name of Applicant	Australian Federation of Air Pilots (AFAP)
Applicant's ACN (if a company)	
Applicant's trading name or registered business name (if applicable)	
Applicant's ABN (if applicable)	ABN 63 230 452 036

1.2 What is the name of the enterprise agreement that is proposed to be terminated (the Agreement)?



Write the name exactly as it appears in the title clause of the Agreement and include the Agreement ID/Code Number if known.

Express Freighters Australia Operations Pty Ltd Enterprise Agreement 2021 (AE517229)

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1.3 What is the nominal expiry date of the Agreement? What is the number of the clause in the Agreement that specifies that date?

Nominal expiry date	31 December 2024
Clause number	Clause 1.2

Part 2 – Grounds for termination



Section 226(1) of the [Fair Work Act 2009](#) sets out 3 different grounds for termination of an enterprise agreement after the nominal expiry date.

If no employees are covered (or likely to be covered) by the Agreement, you should answer question 2.2.

If any employees are covered by the Agreement, you should answer question 2.1 or questions 2.3(a), (b) and (c).

Ground 1 – Unfairness

2.1 Explain why you believe that the continued operation of the Agreement would be unfair for the employees covered by the Agreement.



See section 226(1)(a) of the [Fair Work Act 2009](#).

1. A significant number of employees would be better off under the Air Pilots Award 2020 (“Award”) than under the Express Freighters Australia Operations Pty Ltd Enterprise Agreement 2021 (“Agreement” or “existing Agreement”).
2. In particular, the salary rates under the Award are higher and the existing Agreement does not contain a range of Award allowances and other benefits, such as:
 - Provision for days off only to be changed by agreement (Cl 15.8(f));
 - Night operations allowance (cl 20.2(b));
 - Overseas duty allowance (cl 20.2(d));
 - Loss of Licence reimbursement (cl 20.3(c)); and
 - 17.5% leave loading (cl 23.5).
3. In relation to the salary rates, on 24 June 2024 the AFAP wrote to the employer advising that, as of 1 July 2024, the majority of its pilots will be receiving a salary below the minimum Award rate. At this time the employer refused to commence bargaining and refused to “top up” the salaries under the Agreement to the Award salaries.
4. Effective 1 July 2025, a further Award adjustment has increased the difference between the salaries paid under the existing agreement and the Award salary as follows:

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5. The minimum Award salaries are currently:

Award 1 July 2025 (3.5% increase)

Captain	Narrow-Body	Wide Body
Total	\$202,500	\$228,351

First Officer	Narrow-Body	Wide Body
Total	\$131,666	\$155,038

6. The current Agreement salaries for the majority of EFA pilots are currently:

Agreement salary since 1 January 2024:

Captain	Narrow-Body	Wide Body
Total	\$193,157	\$ 217,595

First Officer	Narrow-Body	Wide Body
Total	\$127,071	\$146,645

7. There are, however, some benefits within the Agreement which do not make the comparison clear for all pilots, such as:

- a 5% incentive/all purpose allowance; and
- increased allowances and payments for check and training pilots.

8. On balance, the AFAP believes that for the majority of employees it would be unfair to remain on the existing Agreement and it would assist bargaining to terminate the existing Agreement.

Ground 2 – Coverage

2.2 Are there any employees covered or likely to be covered by the Agreement?



See section 226(1)(b) of the [Fair Work Act 2009](#).

- Yes
- No
- Don't know

If you answered **Yes** – you should answer question 2.1 or questions 2.3(a), (b) and (c).

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If you answered **No** – you do not need to answer questions 2.1 or 2.3.

Ground 3 – Viability of business, potential terminations of employment and termination entitlements

2.3(a) Explain how the continued operation of the Agreement would pose a significant threat to the viability of a business carried on by the employer, or employers, covered by the Agreement.



See section 226(1)(c)(i) of the [Fair Work Act 2009](#).

Not Applicable

2.3(b) Explain how the termination of the Agreement would be likely to reduce the potential of terminations of employment covered by section 226(2) for the employees covered by the Agreement.



See sections 226(1)(c)(ii) and 226(2) of the [Fair Work Act 2009](#).

Not Applicable

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2.3(c) Does the Agreement contain terms providing entitlements of the kind set out in section 226A(3) relating to the termination of employees’ employment?



See sections 226(1)(c)(iii) and 226A of the [Fair Work Act 2009](#).

Yes

No

If you answered **Yes** – specify which clause(s) in the Agreement provide such entitlements.

Part 3 – Bargaining for a proposed new enterprise agreement

3 Has the process of making a proposed new enterprise agreement started?



Section 226(4) of the [Fair Work Act 2009](#) requires the Commission to consider whether the process of making a proposed new enterprise agreement has started and, if it has, whether terminating the Agreement would adversely affect the bargaining position of employees.

Yes

No

If you answered **Yes** – specify:

- the date of the notification time for the proposed new enterprise agreement,
- whether the proposed new agreement will cover the same, or substantially the same, group of employees as the existing Agreement,
- whether bargaining for the proposed new enterprise agreement is occurring, and
- whether the termination of the existing Agreement would adversely affect the bargaining position of the employees that will be covered by the proposed new enterprise agreement.



Section 173(2) of the [Fair Work Act 2009](#) defines the ‘notification time’ for a proposed enterprise agreement.

- The notification time for the proposed new enterprise agreement occurred on 20 December 2024 when the employer sent out a Notice of Employee Representational Rights.
- The proposed agreement will cover the same group of employees (pilots).
- Bargaining for the proposed new agreement is occurring.

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- Termination of the existing Agreement will assist the bargaining position of some employees and may potentially adversely affect the bargaining position of other employees that will be covered by the proposed new enterprise agreement.

Part 4 – Any other relevant matter**4 Is there any other relevant matter that you believe the Commission should consider in deciding whether to terminate the Agreement?** Yes NoIf you answered **Yes** – please provide further details:See sections 226(1A) and 226(5) of the [Fair Work Act 2009](#).

The existing Agreement has been subject to a range of other applications which may be relevant to s226(1A) “all the circumstances” and s226(5) “any other relevant matter”:

1. On 12 November 2024 the AFAP lodged a Form F32 – Application for a bargaining order (B2024/1459) requesting the employer issue a Notice of Employee Representation Rights and commence joint bargaining with the AFAP, TWU and AIPA.
2. On 12 November 2024 the AFAP lodged a Form F10 – Application for the FWC to deal with a dispute in accordance with a dispute settlement procedure (C2024/8047) regarding whether by virtue of s206 of the Fair Work Act 2009 (the Act), the salaries detailed in clause 4 of the Agreement should be increased to the minimum salary payable under the Award.
3. The decision relating to the s206 dispute was subsequently appealed and is currently awaiting a decision from the Full Bench (C2025/2370).
4. On 4 June 2025 the AFAP lodged a Form F34 – Application for a protected action ballot order (B2025/891) and a protected action ballot has been conducted.
5. Protected industrial action has been taken and is ongoing.

Part 5 – Statistical information



This information is necessary to enable the General Manager of the Fair Work Commission to comply with the statutory reporting obligations in section 653 of the [Fair Work Act 2009](#).

5.1 What is the primary activity of the employer?



For example music retailer, plumbing contractor, steel fabricator, etc.

Air Freight

5.2 Tick the relevant boxes for the states and territories the Agreement operates in:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia
- An external territory


5.3 Of the employees covered by the Agreement, how many employees are in the following demographic groups?

Demographic group	Number of employees
Female	Unknown
Non-English speaking background	Unknown
Aboriginal or Torres Strait Islander	Unknown
Disabled	Unknown
Part-time	Unknown
Casual	Unknown
Under 21 years of age	Unknown
Over 45 years of age	Unknown

FAIR WORK COMMISSION

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Signature		Date:	3 September 2025
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	<p>Giving false or misleading information is a serious offence.</p> <p>A person who knowingly gives false or misleading information or knowingly produces a false or misleading document in support of an application for termination of an enterprise agreement is guilty of an offence, the punishment for which is imprisonment for up to 12 months – see section 137.1 and section 137.2 of the Criminal Code.</p>
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