



DIRECTIONS

Fair Work Act 2009

s.225 - Application for termination of an enterprise agreement after its nominal expiry date

Australian Federation of Air Pilots

(AG2025/2996)

EXPRESS FREIGHTERS AUSTRALIA OPERATIONS PTY LTD

ENTERPRISE AGREEMENT 2021

(ODN AG2022/3520) [AE517229]

Airline operations

DEPUTY PRESIDENT CROSS

SYDNEY, 30 SEPTEMBER 2025

[1] On 3 September 2025, the Australian Federation of Air Pilots (AFAP) filed an application (Application) pursuant to section 225 of *Fair Work Act 2009* (Cth) (FW Act) with the Fair Work Commission (FWC) to terminate the *Express Freighters Australia Operations Pty Ltd Enterprise Agreement 2021* (Agreement).

[2] The Agreement is a single enterprise agreement made pursuant to section 185 of the FW Act with a nominal expiry date 31 December 2024.

[3] The other parties to the Agreement are Express Freighters Australia (Operations) Pty Ltd Trading As Express Freighters Australia (the Employer) and the Australian and International Pilots Association (AFIPA).

[4] Section 226 of the FW Act states that:

“226 Terminating an enterprise agreement after its nominal expiry date

(1) If an application for the termination of an enterprise agreement is made under section 225, the FWC must terminate the agreement if:

(a) the FWC is satisfied that the continued operation of the agreement would be unfair for the employees covered by the agreement; or

(b) the FWC is satisfied that the agreement does not, and is not likely to, cover any employees; or

(c) all of the following apply:

(i) the FWC is satisfied that the continued operation of the enterprise agreement would pose a significant threat to the viability of a business carried on by the employer, or employers, covered by the agreement;

(ii) the FWC is satisfied that the termination of the enterprise agreement would be likely to reduce the potential of terminations of employment covered by subsection (2) for the employees covered by the agreement;

(iii) if the agreement contains terms providing entitlements relating to the termination of employees' employment--each employer covered by the agreement has given the FWC a guarantee of termination entitlements in relation to the termination of the agreement.

(1A) However, the FWC must terminate the enterprise agreement under subsection (1) only if the FWC is satisfied that it is appropriate in all the circumstances to do so.

(2) This subsection covers a termination of the employment of an employee:

(a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or

(b) because of the insolvency or bankruptcy of the employer.

(3) In deciding whether to terminate the agreement, the FWC must consider the views of the following covered by the agreement:

(a) the employees (unless there are no employees covered by the agreement);

(b) each employer;

(c) each employee organisation (if any).

Note: The President may be required to direct a Full Bench to perform a function or exercise a power in relation to the matter if any of the employers, employees, or employee organisations, covered by the agreement oppose the termination (see subsection 615A(3)).

(4) In deciding whether to terminate the agreement (the existing agreement), the FWC must have regard to:

(a) whether the application was made at or after the notification time for a proposed enterprise agreement that will cover the same, or substantially the same, group of employees as the existing agreement; and

(b) whether bargaining for the proposed enterprise agreement is occurring; and

(c) whether the termination of the existing agreement would adversely affect the bargaining position of the employees that will be covered by the proposed enterprise agreement.

(5) In deciding whether to terminate the agreement, the FWC may also have regard to any other relevant matter.”

[5] Pursuant to s.225(3)(c) the Application has been allocated for determination by a Full Bench of the FWC constituted by Deputy President Cross, Commissioner Crawford and Commissioner Sloan.

[6] **By 4:00 pm on 7 October 2025, Australian Federation of Air Pilots** are to file and serve on the AIPA and the Employer:

- a. submissions in support of the Application;
- b. any evidence on which they seek to rely in relation to the Application; and
- c. any authority on which they seek to rely in relation to the Application.

[7] **By 4:00 pm on 14 October 2025**, the Australian and International Pilots Association are to file and serve on the Employer and AFAP:

- a. submissions in response to the Application;
- b. any evidence on which it seeks to rely in response to the Application; and
- c. any authority on which it seeks to rely in response to the Application

[8] **By 4:00 pm on 14 October 2025** the Employer must file and serve on AIPA and AFAP:

- a. submissions in response to the Application;
- b. any evidence on which it seeks to rely in response to the Application; and
- c. any authority on which it seeks to rely in response to the Application

[9] **By 4:00 pm on 21 October 2025**, the Employer is to serve a copy of:

- a. these directions;
- b. the materials filed by the Unions in accordance with paragraph [7] of these directions;
- c. the materials filed by the Employer in accordance with paragraph [8] of these directions (Together the Application Documents) on each Employee, and invite them to provide their views on the Application pursuant to s 226(3)(a) of the FW Act.

[10] The Application Documents should also be placed on the staff noticeboard in the meal rooms (or another accessible place).

[11] **By 4:00 pm on 22 October 2025** a director or authorised officer of the Employer is to file a statutory declaration confirming compliance with paragraph [9] of these directions.

[12] **By 4:00 pm on 28 October 2025**, any employee covered by the Agreement who wishes to provide their views on the Application should do so by sending an email to chambers.cross.dp@fwc.gov.au.

[13] The above matter will be listed for hearing in-person in Sydney before Deputy President Cross, Commissioner Crawford and Commissioner Sloan on a date to be decided.

[14] If a party seeks to be represented at the Hearing by a lawyer or a paid agent, a submission should be made in writing to chambers.cross.dp@fwc.gov.au and a copy forwarded to the other party **by 4pm (AWST) 24 October 2025**. Any submissions with respect to representation should address the provisions of s596(2) of the FW Act.

[15] If a party wishes to object to such a request, a submission from that party setting out their objections should be forwarded to chambers.cross.dp@fwc.gov.au and copy served on the other party **by 4pm on 28 October 2025**.

[16] Parties should not proceed under the assumption that permission to be represented will be granted. Where possible, applications for permission to be represented will be determined on the papers, and the parties advised of the outcome, prior to the Hearing.

[17] The parties must notify each other and chambers.cross.dp@fwc.gov.au, if any witnesses are not required for cross-examination **by 4pm 28 October 2025**. All other witnesses must attend the Hearing in person from the listed date and time for the Hearing until discharged.

[18] The parties must jointly prepare and file in the FWC a digital court book merging all submissions, evidence and authorities into a single pdf with continuous numbering. This document must be **filed no later than, 4pm 31 October 2025**. Parties please note that materials not incorporated in the digital court book will NOT be admitted at the Hearing without leave.

[19] Compliance with these Directions are mandatory and a failure to do so may disadvantage the party concerned.

[20] Any documents to be filed with the FWC or any enquiries with respect to these directions should be addressed to chambers.cross.dp@fwc.gov.au



DEPUTY PRESIDENT

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