



## About the F28 application form

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### **Application for termination of collective agreement-based transitional instrument**

#### **When to use this form**

Use this form if you want to make an application to the Fair Work Commission (the Commission) to terminate a collective agreement-based transitional instrument (CABTI) if you are covered by the CABTI and either:

- the employer(s) and employees have agreed to the termination; or
- the nominal expiry date of the CABTI has passed.

Please note that as set out in item 20A of Schedule 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, CABTIs are subject to automatic sunseting unless they are extended on application to the Commission.

#### **About terminating collective agreement-based transitional instrument**

The [Fair Work Act 2009](#) allows parties to apply to the Commission to terminate a CABTI.

##### **Termination by agreement**

The employer(s) and employees covered by a CABTI can jointly agree to terminate the CABTI either during the operation of the CABTI or after its nominal expiry date.

An agreement to terminate a CABTI is reached when a majority of employees who cast a valid vote, vote to approve the termination. The Commission must approve the termination of a CABTI for the termination to be effective.

The Commission must approve the termination if satisfied that:

- each employer covered by the CABTI took all reasonable steps to notify employees of the time and place of the vote and method of voting and gave employees a reasonable opportunity to decide whether they want to approve the proposed termination;
- the termination was agreed to in accordance with s 221(1) or (2);
- there are no other reasonable grounds for believing employees have not agreed to the termination; and
- it is appropriate to approve the termination taking into account the views of the employee organisation or employee organisations (if any) covered by the CABTI (s.223).

The application must be accompanied by a declaration addressing the above matters. Applicants can use the Form F24A Declaration in support of termination of an enterprise agreement.

## Unilateral termination

If the CABTI has passed its nominal expiry date, an employer, an employee or an employee organisation covered by the CABTI can apply to the Commission to terminate the CABTI.

The Commission must terminate the CABTI if it is satisfied that it is appropriate in all the circumstances to do so and one of the following 3 grounds applies:

Ground 1 - the Commission is satisfied that the continued operation of the CABTI would be unfair for the employees covered by it; or

Ground 2 - the Commission is satisfied that the CABTI does not, and is not likely to, cover any employees; or

Ground 3:

- the Commission is satisfied that the continued operation of the CABTI would pose a significant threat to the viability of a business carried on by the employer, or employers, covered by the CABTI; and
- the Commission is satisfied that the termination of the CABTI would likely reduce the potential of terminations of employment covered by s.226(2) for the employees covered by the CABTI; and
- if the CABTI contains terms providing entitlements of the kind set out in s.226A(3) relating to the termination of employees' employment, each employer covered by the CABTI has given the Commission a guarantee of termination entitlements in relation to the termination of the CABTI (s.226(1))

In deciding whether to terminate a CABTI that has passed its nominal expiry date, the Commission must consider:

- the views of the employees (unless there are no employees covered by the CABTI), each employer and each employee organisation (if any) covered by the CABTI (s.226(3)); and
- whether the process of making a proposed new enterprise agreement has started and, if it has, whether terminating the CABTI would adversely affect the bargaining position of the employees that will be covered by the proposed new enterprise agreement (s.226(4)).

The application must be accompanied by a declaration addressing the above matters. Applicants can use the Form F24C Declaration in relation to termination of an enterprise agreement after the nominal expiry date.

## Lodging and serving your completed form

1. **Lodge** with the Commission:

- this **application** and any supporting documents, and
- a **declaration** setting out matters the Commission must be satisfied about to approve the termination:
  - If the termination was by agreement – use the [Form F24A declaration](#)
  - If termination was unilateral (after the nominal expiry date) – use the [Form F24C declaration](#).

You can lodge:

- by email to [lodge@fwc.gov.au](mailto:lodge@fwc.gov.au), or
- by post or in person to the [Commission's office](#) in your state or territory.

2. **As soon as practicable** after lodging, **serve a copy** of all documents you lodged with the Commission on each employer and each employee organisation bound by the CABTI.

You can serve documents several ways, including by email, express post or registered post.

An easy way to serve documents is to copy the organisation or people into the email you send to the Commission when you lodge your application.

## Where to get help

### Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au) also contains a range of information that may assist.

### Legal or other representation

Representation is where another person speaks or acts on your behalf, or assists you in certain other ways in relation to a Commission case. A representative could be a lawyer, paid agent, union, employer organisation or a not-for-profit association or body that provides support, advice or advocacy in relation to employment and/or workplace relations matters.

You do not have to be represented in a case at the Commission.

There are some rules about when a lawyer or paid agent can represent you.

Unless the Commission decides otherwise in a particular case, a lawyer or paid agent can represent you without permission to:

- prepare and lodge this application,
- prepare and lodge submissions with the Commission, or
- write to the Commission and other people involved in the case on your behalf.

Generally, you must give notice to the Commission and seek permission from the Commission Member dealing with your case if you wish to have a **lawyer or paid agent** represent you in a **conference** or a **hearing**. You do not, however, need to give notice or ask permission if the lawyer or paid agent is:

- an employee or officer (for a business), or
- a bargaining representative that is representing you, or
- an employee or officer of a union or employer organisation, or an association of employers, or a peak council, that is representing you.

You can notify the Commission that you have a lawyer or paid agent using this form – provide their details at ‘Do you have a representative?’.

If you need to notify the Commission that you have a lawyer or paid agent after you have lodged this form, or if you need to ask permission for a lawyer or paid agent to take part in a **conference or hearing**, use [Form F53](#).

Rule 13(2) of the [Fair Work Commission Rules 2024](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12, 13 and 14 of the [Fair Work Commission Rules 2024](#) and the Commission’s [practice note on representation by lawyers and paid agents](#).

## Glossary of common terms

**Applicant** – This is the person or organisation that is making an application.

**Lawyer** – This is a person who is admitted to the legal profession by a Supreme Court of a state or territory.

**Paid agent** – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**Party** – A party is a person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** – The person or business responding to an application made by an Applicant.

**Service** – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, express or registered post, or in person. Part 5 of Chapter 1, rules 120 and 121, and Schedule 1 of the [Fair Work Commission Rules 2024](#) deal with service.

## Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission’s collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



**Remove this cover sheet** and keep it for future reference – it contains useful information.

# Form F28 – Application for termination of collective agreement-based transitional instrument

[Fair Work \(Transitional Provisions and Consequential Amendments\) Act 2009](#), items 15 and 16 of Schedule 3; [Fair Work Commission Rules 2024](#), rules 120 and 121 and Schedule 1

This is an application to the Fair Work Commission for termination of a collective agreement-based transitional instrument.

## The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

**If the Applicant is a company or organisation please also provide the following details**

Applicant's legal name	
Applicant's trading name	
ABN/ACN	
Contact person	

**Do you need an interpreter?**



If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

Yes – Specify language

No

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**Do you require any special assistance at the hearing or conference (e.g. a hearing loop)?**

- Yes – Please specify the assistance required
- No

**Do you have a representative?**



A representative is a person or organisation representing you. This might be a lawyer or paid agent, a union or employer organisation, an association of employers, a peak council or a not-for-profit association or body that provides support, advice or advocacy in relation to employment or workplace relations. You do not need to have a representative.

- Yes – Provide representative’s details below
- No

**Your representative**



These are the details of the person or organisation that is representing you (if any).

Name of person			
Firm, organisation or company			
Representative’s ABN (if applicable)			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

**Is your representative a lawyer or paid agent?**

<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent
<input type="checkbox"/> No	

**1. Coverage****1.1 What industry is the employer in?**

**1.2 What is the name of the collective agreement-based transitional instrument (CABTI) to be terminated? (Include any ID/Code No. if known.)**

**1.3 What is the nominal expiry date of the CABTI?**

**2. The Application****2.1 Which application is being made?**

- application for approval for the termination of the collective agreement-based transitional instrument by agreement between the parties (See subdivision C of Division 7 of Part 2-4 of the *Fair Work Act 2009* as it applies under item 15 of Schedule 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*) – **Go to question 2.2**
- application for termination of the collective agreement-based transitional instrument after the nominal expiry date on application by one of the parties (See subdivision D of Division 7 of Part 2-4 of the *Fair Work Act 2009* as it applies under item 16 of Schedule 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*) – **Go to question 3**

**2.2 If this application is for approval of the termination of the collective agreement-based transitional instrument by agreement between the parties, please specify the date when the termination was agreed to.**

**2.3 Is the date specified in question 2.2 more than 14 days before this application was made?**

- Yes
- No – **Go to question 3**

If yes, please provide details of the circumstances the Commission should take into account in deciding if it is fair to extend the date for lodging this application.

### 3. Employer(s) covered by the collective agreement-based transitional instrument

#### 3.1 Please provide details of the employer(s) covered by the CABTI:

Employer’s legal name			
Employer’s trading name			
ABN/ACN			
Contact person			
Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			



If the CABTI is a multi-enterprise agreement, please attach additional pages identifying each employer covered by the CABTI. All of the above details must be provided for each employer

#### 3.2 Are any of the employers identified in question 3.1 covered by the CABTI as the result of a transfer of business?



See ss.310 to 313 of the [Fair Work Act 2009](#) and Part 3 of Schedule 11 to the [Fair Work \(Transitional Provisions and Consequential Amendments\) Act 2009](#) for when the transfer of business from one employer to another means the new employer is covered by an agreement-based transitional instrument.

Yes

No

If you answered **Yes** – Provide the details below:

**4. Please provide details of any employee organisations covered by the CABTI**

Name of employee organisation			
ABN/ACN			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

If the CABTI covers more than one employee organisation, please attach additional pages identifying each employee organisation covered by the CABTI. Please provide all of the details identified above for each organisation



The Applicant must attach a declaration, setting out the basis on which the Commission can be satisfied that the criteria for termination of the collective agreement-based transitional instrument has been met. See s.223 or s.226 of the *Fair Work Act 2009*.

### Authority to sign and signature



For 'Authority to sign':

- If you are the Applicant– insert 'Applicant'
- If you are an employee of a company or organisation that is the Applicant– insert your position title
- If you are the Applicant's representative and have provided your details in this form– insert 'Representative'.

<b>Authority to sign</b>	
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

<b>Signature</b>	
<b>Name</b>	
<b>Date</b>	