



## Australian trade unions

# Employers 'rushing' to terminate enterprise agreements, Australian unions say

**ACTU president suggests companies seizing moment before election after Qantas attempts to unilaterally end agreements**

**Get our free news app; get our morning email briefing**

## Ben Butler

Sat 22 Jan 2022 06.00 AEDT

Unions are bracing for a flood of employers to follow the lead set by airline Qantas and stevedore Patrick Terminals by trying to rip up enterprise agreements with staff before the federal election.

Labor, which has been performing strongly in recent polling, has promised to stop employers from unilaterally terminating agreements if it wins the election which is due to be held on or before 21 May.

Enterprise agreements, struck between employers and their staff, provide conditions that leave workers better off overall than the underlying award conditions governing their industry. The employment conditions they set down continue in force until a new agreement is struck or they are terminated by the Fair Work Commission.

Applications to terminate enterprise agreements were relatively rare until a landmark decision in 2015 in which rail company Aurizon convinced the FWC to tear up a dozen agreements it had previously struck with unions.

Following Aurizon's victory, terminations skyrocketed, according to FWC reports and research by the Australia Institute.

Terminations reached a peak of 508 in 2017-18 and have since fallen back but remain above pre-Aurizon levels of around 200 a year or less, with 330 applications to terminate lodged with the FWC in the 2020-21 year.

"It looks to us like companies are seeing this moment as their best chance to cut workers' wages and conditions, while Scott Morrison is in power," the president of the Australian Council of Trade Unions, Michele O'Neil, said.

She said the ability of employers to obtain orders from the FWC terminating agreements without the consent of employees was a "serious flaw in workers' protections".

"Companies are opportunistically rushing to try and cut these agreements before there's potentially any change in government," she said.

## **In the skies**

On Thursday, Qantas said it had applied to the FWC to terminate the agreement covering flight attendants who work on its international flights "as a last resort to change restrictive and outdated rostering processes".

The application, the first ever made by Qantas despite a **history of aggressive industrial relations behaviour** that includes **grounding its entire fleet in 2011**, came after 97% of affected staff voted against a new deal proposed by the company.

Qantas seeks to collapse its existing two classes of flight attendants into one class. Currently, employees hired before 2008 are on an agreement that offers higher wages and better conditions, including longer rest times between longer flights.

Employees who were hired before 2008 are trained to work on Airbus A330s and Boeing 747s - the last of which Qantas retired from its fleet in 2020 - while the newer staff can work on the Airbus A380 and the Boeing 787.

The airline said it wanted to "simplify complex and historical rostering conditions that meant around 20% of more than 2,500 long haul crew could only be used on a single type of aircraft - which is unworkable as the airline seeks to recover from Covid".

It said a counter-offer from the staff union, the Flight Attendants Association of Australia, “represented a \$60m cost increase over four years - which is also unworkable” and accused the union of running a scare campaign against the new deal.

Former Qantas employee and federal secretary of the FAAA, Teri O’Toole, said neither claim was true.

She said the union had offered to compromise, agreeing to create a single class of flight attendant that was a “hybrid” of the two existing categories.

Attendants employed before 2008 currently get up to five days of extra sick leave a year if they contract an upper respiratory tract infection - something the FAAA wanted extended to all staff due to the Covid pandemic.

“If they’re saying it would have cost \$60m, I’d be shocked, because it wouldn’t,” she said.

“This was never a negotiation where they were serious about negotiating.”

She said that, unlike rival Virgin, Qantas was “not on its knees” financially and during the pandemic “the cost of crew has all been paid by the taxpayer”.

“They’re not trolley dollies, they’re first responders,” she said.

“They will arrest unruly staff, they will fight fires, they will give you CPR and they will defend the flight deck with their life.”

## **By the sea**

Patrick Terminals moved to terminate its agreement with the Maritime Union of Australia in October.

Like Qantas, it has a long history of fighting the unions. Stoushes include one of the key confrontations in Australian industrial relations history, the **1988 waterfront dispute**, in which the company sacked its workforce, locked them out and trained a replacement workforce of ex-soldiers in Dubai.

Patrick said the agreement was “no longer fit for purpose, as it contains a number of operational restrictions that have limited the ability of Patrick to meet customer requirements at a time of congestion in global supply chains”.

Clauses the company objects to include “safe manning” ones that specify minimum headcounts at work, restrictions on who it can recruit and the “provision of Foxtel, protective clothing, gym allowances, prescription glasses, tea/coffee and Milo, quiet rooms & WiFi, notice boards, microwaves, fridges, chairs, grills, lounges and

recliner seats”, which it says should be dealt with through company policy rather than the agreement.

Unions say terminating the agreement could cut the pay of some wharfies by up to 50%.

The MUA’s national secretary, Paddy Crumlin, said killing the agreement would end “penalty rates, shift allowances and overtime provisions” that allow Patrick’s operations to run around the clock and accused the company of “sustained lies and vilification of their own workforce in the lead up to Christmas”.

Patrick’s chief executive, Michael Jovicic, said the application was “not about reducing the pay of our workers”.

“Patrick Terminals needs an agreement that is fit for purpose and does not hinder our ability to service our customer requirements,” he said.

“At present our operations are restricted by the MUA in terms of who we recruit, how we roster, who we promote and how we service our customers.

“This is not about their members’ pay - this is all about the MUA wanting to maintain their stranglehold and control of the Australian waterfront.”

### **Before the commission**

The ACTU’s O’Neil said the FWC’s decision in the Aurizon case in 2015 made applying for termination more attractive to employers because it “set a bizarre precedent that somehow said that forcing unions and workers to bargain from the bare minimum was somehow in the public interest”.

“We reject that,” she said.

“What it saw was a massive escalation in the number of companies that then tried to use this tactic.

“It’s something that really puts a gun to the head of workers in the sense that it is such an extreme action. You can imagine the impact it would have where workers are told their simple choice is either go backwards by up to 50% of your wages, or agree with the deal we want.”

The chief executive of industry body Australian Industry Group, Innes Willox, denied that employers were responsible for a surge in termination applications over the past few years.

“Unions and some political parties like to argue that applications by employers to terminate enterprise agreements are common, but this is not supported by the

facts," he said.

He said the number of contested applications had fallen in the past six years.

"Nearly all of the applications made to terminate enterprise agreements are not contested," he said.

"Also, of the contested matters, most applications are made by unions and employees, not employers."

---