About the F29 application form

# Application for approval of termination of an individual agreement-based transitional instrument

## Who can use this form

Use this form if you want to terminate an individual agreement-based transitional instrument (ITEAs, preserved individual State agreements, AWAs or pre-reform AWAs) and you are a person covered by that instrument (employer or employee). Either party to the instrument may apply to the Fair Work Commission (Commission) for approval to terminate the agreement.

## About applications to terminate an individual agreement-based transitional instrument

### Termination by written agreement (Schedule 3, item 17, [Fair Work (Transitional Provisions and Consequential Amendments) Act 2009](https://www.legislation.gov.au/Series/C2009A00055) (TPCA Act))

An individual agreement-based transitional instrument (the instrument) can be terminated at any time by written agreement of the employer and employee who are covered by the instrument:

* The employer and employee who are covered by the instrument may make a written agreement to terminate the instrument (a termination agreement).
* Each party to the instrument is required to sign the termination agreement and their signatures must be witnessed. If, an employee is under 18 years of age, his or her parent or guardian must sign the termination agreement.
* A termination agreement will only be effective if the Commission approves the application to terminate the instrument.

### Unilateral termination (Schedule 3, item 19, TPCA Act)

If the instrument has passed its nominal expiry date, either the employer or employee who is covered by that instrument may apply to the Commission for approval to terminate it.

Fourteen days prior to making the application, the applicant must provide a notice to the other party to the instrument that:

* identifies the transitional instrument;
* states that they intend to apply to the Commission for approval of the termination of the instrument; and
* specifies that the instrument will terminate on the 90th day after the Commission approves of the termination (if the termination is approved).

### Multiple applications (See rule 27(3) of the Fair Work Commission Rules 2013 (the Fair Work Commission Rules)

If an employer is seeking the approval of the Commission to terminate multiple instruments, one application need only be lodged with a schedule setting out:

* the name of the other party to each instrument;
* whether, in respect of each instrument, the instrument is to be terminated by written agreement (Schedule 3 item 17) or by the employer (if each instrument has passed its nominal expiry date, Sch 3 item 19));
* the identification number for each instrument;
* the nominal expiry date of each instrument and if a written agreement has been made to terminate the instrument whether the employee is under 18 years of age.

The schedule should be in the form found on the Commission’s website at: [www.fwc.gov.au/documents/forms/form\_f29.xlsx](http://www.fwc.gov.au/documents/forms/form_f29.xlsx).

The employer must lodge a copy of each written agreement that has been made with each of the other parties to the agreements listed in the schedule.

## Lodgment and service of your completed form

1. **Lodge your application** along with any required accompanying documents with the Commission. You can lodge your application by post, by fax, by email or in person at the [Commission office](https://www.fwc.gov.au/disputes-at-work/how-the-commission-works/commission-offices) in your state or territory.

2. You must **serve a copy** **of this application and any supporting documents** on the other party to the instrument as soon as practicable after it is lodged with the Commission (Fair Work Commission Rules, rule 41 and Schedule 1). You can serve a copy of the application and supporting documents by email, post, express post, or registered post.

Details of the accompanying material required to be lodged is contained in the application form. This will vary depending on the type of application made.

If an application contains a schedule listing more than one agreement (as referred to above), the employer must not serve a copy of the application and schedule upon a party to one of the agreements in a way that reveals the identity of any other persons mentioned in that schedule.

## Where to get help

### 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](https://www.fwc.gov.au) also contains a range of information that may assist.

### Throughout this form

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

### Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person’s behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person’s lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person’s behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

* an employee or officer of the person **or**
* a bargaining representative that is representing the person **or**
* an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](https://www.legislation.gov.au/Series/F2013L02054) 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](https://www.legislation.gov.au/Series/C2009A00028), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](https://www.legislation.gov.au/Series/F2013L02054) and the Commission’s [practice note on representation by lawyers and paid agents](https://www.fwc.gov.au/resources/practice-notes/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, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 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](http://www.fwc.gov.au/documents/forms/Form_F29-privacy.pdf) 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 F29 – Application for approval of termination of an individual agreement-based transitional instrument

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009, Schedule 3, items 17 and 19

This is an application to terminate an agreement-based transitional instrument under either item 17 or item 19 of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

## The Applicant

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | These are the details of the person who is making the application to the Commission. | | | | |
| Title | | [ ] Mr [ ] Mrs [ ] Ms [ ] Other please specify: | | |
| First name(s) | |  | | |
| Surname | |  | | |
| Postal address | |  | | |
| Suburb | |  | | |
| State or territory | |  | Postcode |  |
| Phone number | |  | Fax number |  |
| Email address | |  | | |

### If the Applicant is an organisation please also provide the following details

|  |  |
| --- | --- |
| Legal name of organisation |  |
| Trading name of organisation |  |
| 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](https://www.fwc.gov.au/about-us/contact-us/accessibility) on our website.

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|  |

[ ] Yes – Specify language

[ ] No

### Do you require any special assistance at the hearing or conference (eg a hearing loop)?

[ ] Yes – Please specify the assistance required

[ ] No

### Do you have a representative?

|  |  |
| --- | --- |
|  | A representative is a person or organisation who is representing you. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative. |

[ ] Yes – Provide representative’s details below

[ ] No – Go to question 1

### Your representative

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | These are the details of the person or organisation that is representing you (if any). | | | | |
| Name of person | |  | | |
| Firm, organisation or company | |  | | |
| Postal address | |  | | |
| Suburb | |  | | |
| State or territory | |  | Postcode |  |
| Phone number | |  | Fax number |  |
| Email address | |  | | |

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

[ ] Yes

[ ] No

## The other party

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | These are the details of the other party covered by the instrument. | | | | |
| Title | | [ ] Mr [ ] Mrs [ ] Ms [ ] Other please specify: | | |
| First name(s) | |  | | |
| Surname | |  | | |
| Postal address | |  | | |
| Suburb | |  | | |
| State or territory | |  | Postcode |  |
| Phone number | |  | Fax number |  |
| Email address | |  | | |

### If the other party is an organisation please also provide the following details

|  |  |
| --- | --- |
| Legal name of organisation |  |
| Trading name of organisation |  |
| ABN/ACN |  |
| Contact person |  |

## 1. Preliminary

### 1.1 What is the industry of the employer?

|  |  |  |
| --- | --- | --- |
|  | Please specify the industry. | |
|  | |

### 1.2 What is the name of the transitional instrument?

|  |  |
| --- | --- |
|  | Please also include the identification number of the instrument or date the agreement was made, if it is known. |

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|  |

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| --- |
| 1.3 What is the nominal expiry date of the instrument? |

|  |
| --- |
|  |

### 1.4 What type of application are you making?

[ ] Application to terminate an instrument by written agreement? Go to Section 2

[ ] Application to unilaterally terminate an instrument – Go to Section 3

[ ] Multiple application – Complete Section 4 in addition to 2 or 3

## 2. Terminating the instrument by written agreement

### 2.1 Have you and another party covered by the instrument made a written agreement to terminate the instrument (‘the termination agreement’) under item 17 of Schedule 3, TPCA Act?

[ ] Yes

[ ] No

### 2.2 Have you and the other party covered by the instrument both signed the termination agreement?

[ ] Yes

[ ] No

### 2.3 Were the signatures on the termination agreement witnessed?

[ ] Yes

[ ] No

### 2.4 Is the employee party to the instrument under 18 years of age?

[ ] Yes – Go to 2.5

[ ] No

### 2.5 If you answered yes to 2.4, has the parent or guardian of the employee also signed the termination agreement?

[ ] Yes

[ ] No

### 2.6 If you answered yes to 2.3 and 2.5 (if applicable), what date was the termination agreement made?

|  |
| --- |
|  |

### 2.7 Is the date you set out in 2.6 within 14 days of the date this application was made?

[ ] Yes

[ ] No

|  |  |
| --- | --- |
|  | If this application is not made within 14 days of the date that the termination agreement was made, but the Commission considers it fair in all the circumstances to extend that period, then the application must be made within such further period that the Commission allows. |

### 2.8 If you answered no to 2.7 set out why you think the Commission should extend the period for making this application

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| --- | --- |
|  | You must attach a copy of the **signed termination agreement** with this application.  The signatures to the termination agreement must be witnessed. |

## 3. Terminating the instrument unilaterally

### 3.1 Do you want to terminate the instrument unilaterally under item 19 of Schedule 3, TPCA Act?

[ ] Yes

[ ] No

### 3.2 Are you a party covered by the instrument?

[ ] Yes

[ ] No

### 3.3 Has the nominal expiry date of the instrument passed?

[ ] Yes

[ ] No

|  |  |
| --- | --- |
|  | An application under item 19 of Schedule 3 of the TPCA Act must be accompanied by a declaration made by a person authorised to do so indicating the facts establishing a basis for the Commission to be satisfied that the requirements of subitems 19(2) and (3) have been complied with including a copy of the written declaration.  The declaration must be accompanied by a copy of the notice given in accordance with subitem 19(2) of Schedule 3. |

## 4. Termination of multiple specimens

### 4.1 Is approval being sought to terminate multiple instruments? If so, attach a schedule setting out the relevant details relating to each of the instruments to be terminated.

|  |  |
| --- | --- |
|  | The schedule must comply with sub-rule 27(3) of the Fair Work Commission Rules.  The employer must lodge a copy of each termination agreement that has been made with each of the other parties to the agreements listed in the schedule. |

[ ] Yes

[ ] No

## Signature

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below. | | |
| Signature or common seal | |  |
| Name | |  |
| Date | |  |
| Capacity/Position | |  |
| PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS | | | | |