

New analysis of FWC enterprise agreement termination decisions – The facts do not support the need for change

“A new analysis by Actus Workplace Lawyers of Fair Work Commission (FWC) decisions terminating enterprise agreements shows that the facts do not support union arguments to change the Fair Work Act,” Stephen Smith, Principal of Actus Workplace Lawyers said.

“The analysis shows that of 95 enterprise agreements that were terminated by the FWC in 2020, 2021 and 2022 with nominal expiry dates between 1 January 2020 and 1 August 2022, **97% (92 applications) were not contested by any party.**”

“Of the 3 applications which were opposed by one or more unions, two of the agreements did not apply to any employees and, in the other case, the FWC was satisfied that the employees covered by the agreement would not lose any entitlements.”

“More than 50% of the 95 FWC decisions refer to the application to terminate the agreement being brought to the attention of one or more unions. In 94% of these cases, the union/s either supported the termination of the agreement or did not oppose the termination.”

“This latest analysis by Actus Workplace Lawyers has yielded results with some similarity to an analysis carried out by the FWC five years ago.”

“A tiny proportion of applications to terminate enterprise agreements are opposed by any party and in a large proportion of cases the applications are expressly supported or not opposed by unions”.

“Further, the number of applications to terminate enterprise agreements has decreased over recent years.”

“Given the facts, there is no justification for amending the Fair Work Act to impose any further limits on the ability of a party to apply to the FWC for the termination of an enterprise agreement,” said Mr Smith.

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[Actus Workplace Lawyers, Workplace relations policy and research paper - Termination of enterprise agreements, 19 August 2022.](#)