

# Form F24C – Declaration in relation to termination of an enterprise agreement after the nominal expiry date

[Fair Work Act 2009](#), s.225; [Fair Work Commission Rules 2013](#), rule 26 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission for termination of an enterprise agreement under Part 2-4 of the [Fair Work Act 2009](#).

I,	<b>Justin Gusset</b>	
	[insert name of person making the declaration]	
	[insert postal address of person making the declaration]	
	[insert suburb]	[insert State or Territory] [insert postcode]
	<b>Genius (Retail Store Employee)</b>	
	[insert occupation of person making the declaration]	

declare that:

## Part 1 – Preliminary

### 1.1 What is the name of the Applicant for termination of the enterprise agreement?

Legal name of Applicant	Justin Gusset
Applicant's ACN (if a company)	
Applicant's trading name or registered business name (if applicable)	
Applicant's ABN (if applicable)	

### 1.2 What is the name of the enterprise agreement that is proposed to be terminated (the Agreement)?

- ① Write the name exactly as it appears in the title clause of the Agreement and include the Agreement ID/Code Number if known.

Apple Retail Enterprise Agreement 2014 - AE408483
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### 1.3 What is the nominal expiry date of the Agreement? What is the number of the clause in the Agreement that specifies that date?

Nominal expiry date	7 July 2018
Clause number	1.5

## Part 2 – Grounds for termination

- ① Section 226(1) of the [Fair Work Act 2009](#) sets out 3 different grounds for termination of an enterprise agreement after the nominal expiry date.
- If no employees are covered (or likely to be covered) by the Agreement, you should answer question 2.2.
- If any employees are covered by the Agreement, you should answer question 2.1 or

questions 2.3(a), (b) and (c).

## Ground 1 – Unfairness

### 2.1 Explain why you believe that the continued operation of the Agreement would be unfair for the employees covered by the Agreement.



See section 226(1)(a) of the [Fair Work Act 2009](#).

1. The Apple Retail Enterprise **Agreement** 2014 was approved on 5 June 2014. I commenced employment with the respondent on 2 June 2014. For almost the entire period of my 8 and a half years working with Apple I have had the Agreement unfairly imposed upon me.
2. I have worked in many roles during that time. I moved from part-time to full-time employment in 2014. Some of the roles I have held were at Level 1 in the Agreement and some were at Level 2 in the Agreement. I have worked as a Specialist, Technical Specialist, Technical Expert, Genius and, during lockdown, on phone support.
3. My union and bargaining representative, RAFFWU, has undertaken an analysis of the Agreement and the *General Retail Industry Award 2020* which is annexed to this declaration. I rely on and agree with that analysis.
4. It would be unfair on me and my fellow workers to be required to continue to work under the Agreement after its expiry date, because as long as it operates we will be disadvantaged monetarily in comparison to the Award from time to time across the week, as well as experience inferior rostering conditions and other protections which diminish our quality of life.
5. I have spoken with many workers, including many part-time workers at Level 1, who will substantially benefit with a higher enforceable wage and superior rostering arrangements should the Award apply.
6. At numerous times across the week I will be entitled to higher wages in an enforceable industrial instrument if the Award applied. While I am currently paid more than the Agreement rates, and wages will not substantially change for me, I know many other employees will have higher wages. Under the Award I would also have many improved rostering protections, hours of work protections and other rights as outlined in the analysis.
7. In circumstances where workers are at times earning less than the relevant Award, I also ask that this matter be dealt with expeditiously by the Commission – please see paragraphs [23] – [25] in [2018] FWCFB 4344 on this point.

## Ground 2 – Coverage

### 2.2 Are there any employees covered or likely to be covered by the Agreement?



See section 226(1)(b) of the [Fair Work Act 2009](#).

- Yes  
 No  
 Don't know

If you answered **Yes** – you should answer question 2.1 or questions 2.3(a), (b) and (c).

If you answered **No** – you do not need to answer questions 2.1 or 2.3.

## Ground 3 – Viability of business, potential terminations of employment and termination entitlements

### 2.3(a) Explain how the continued operation of the Agreement would pose a significant threat to the viability of a business carried on by the employer, or employers,

covered by the Agreement.



See section 226(1)(c)(i) of the [Fair Work Act 2009](#).

2.3(b)

**Explain how the termination of the Agreement would be likely to reduce the potential of terminations of employment covered by section 226(2) for the employees covered by the Agreement.**



See sections 226(1)(c)(ii) and 226(2) of the [Fair Work Act 2009](#).

2.3(c)

**Does the Agreement contain terms providing entitlements of the kind set out in section 226A(3) relating to the termination of employees' employment?**



See sections 226(1)(c)(iii) and 226A of the [Fair Work Act 2009](#).

Yes

No

If you answered **Yes** – specify which clause(s) in the Agreement provide such entitlements.

### Part 3 – Bargaining for a proposed new enterprise agreement

**3 Has the process of making a proposed new enterprise agreement started?**



Section 226(4) of the [Fair Work Act 2009](#) requires the Commission to consider whether the process of making a proposed new enterprise agreement has started and, if it has, whether terminating the Agreement would adversely affect the bargaining position of employees.

Yes

No

If you answered **Yes** – specify:

- the date of the notification time for the proposed new enterprise agreement,
- whether the proposed new agreement will cover the same, or substantially the same, group of employees as the existing Agreement,

- whether bargaining for the proposed new enterprise agreement is occurring, and
- whether the termination of the existing Agreement would adversely affect the bargaining position of the employees that will be covered by the proposed new enterprise agreement.

⑧ Section 173(2) of the [Fair Work Act 2009](#) defines the ‘notification time’ for a proposed enterprise agreement.

#### **Date of notification time**

1. Apple Pty Ltd notified workers that bargaining for a new enterprise would begin on 3 August 2022.

#### **Whether the proposed new agreement will cover the same employees**

2. The proposed enterprise agreement will cover all of the workers covered by the current Agreement.

#### **Whether bargaining is occurring**

3. Bargaining for a proposed new enterprise agreement occurred between 15 August 2022 and 19 October 2022.
4. On 27 October 2022, 68% of employees voted against the term of a proposed new enterprise agreement.
5. Bargaining is currently on hiatus at the initiative of the employer, despite the strong disagreement from workers. Bargaining is expected to be picked up around the end of January 2023.

#### **Whether termination will adversely affect employees’ bargaining position**

6. Termination of the existing enterprise Agreement would not adversely affect the bargaining position of the employees, because employees will be entitled to higher enforceable wages across the week under the relevant *General Retail Award 2020*.
7. Workers will also have improved rostering principles, penalty rates, allowances, loadings, and hours of work protections. This means the employees’ bargaining position to negotiate better wages and conditions will be improved from what is currently the case.
8. In these circumstances, termination will not adversely affect the bargaining position of covered employees on the whole.

### **Part 4 – Any other relevant matter**

#### **4 Is there any other relevant matter that you believe the Commission should consider in deciding whether to terminate the Agreement?**

- Yes  
 No

If you answered **Yes** – please provide further details:

⑧ See sections 226(1A) and 226(5) of the [Fair Work Act 2009](#).

### **Part 5 – Statistical information**

This information is necessary to enable the General Manager of the Fair Work Commission

Ⓜ to comply with the statutory reporting obligations in section 653 of the Fair Work Act 2009.

**5.1 What is the primary activity of the employer?**

Ⓜ For example music retailer, plumbing contractor, steel fabricator, etc.

Electronic goods retailer

**5.2 Tick the relevant boxes for the states and territories the Agreement operates in:**

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia
- An external territory

**5.3 Of the employees covered by the Agreement, how many employees are in the following demographic groups?**

Demographic group	Number of employees
Female	
Non-English speaking background	
Aboriginal or Torres Strait Islander	
Disabled	
Part-time	
Casual	
Under 21 years of age	
Over 45 years of age	

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*J. Gussat* 23/12/22

Ⓜ Giving false or misleading information is a serious offence.  
A person who knowingly gives false or misleading information or knowingly produces a false or misleading document in support of an application for termination of an enterprise agreement is guilty of an offence, the punishment for which is imprisonment for up to 12 months - see s.137.1 and s.137.2 of the Criminal Code.

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