Briefing Paper:

Going Nuclear:
The Costs of Mid-Bargaining Termination of Enterprise Agreements

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November 2022

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Summary

One important component of new industrial relations legislation introduced by the Commonwealth government would prevent employers from unilaterally applying to terminate expired enterprise agreements (EAs) in the midst of negotiations with workers and their unions for a replacement agreement. Many employers in recent years, emboldened by a precedent-setting 2015 Federal Court decision, have applied for termination (or threatened to do so) in order to compel employees to accept unfavourable changes in existing EAs. This option, dubbed the 'nuclear option', undermines workers' bargaining position and damages the integrity of the collective bargaining process.

A telling example of employers' use of this aggressive strategy, highlighting the need for these legislative reforms, is provided by an extraordinary round of collective bargaining that occurred earlier this year at the Qantas airline. In early 2022, during negotiations for a new enterprise agreement with its international cabin crew staff (represented by the Flight Attendants Association of Australia and the Transport Workers Union), Qantas applied to the Fair Work Commission (FWC) to terminate the existing (but expired) international cabin crew agreement. If approved by the Commission, termination would have meant employee conditions could have defaulted to the *Aircraft Cabin Crew Award 2020*.

Wages and conditions would then have been dramatically cut as a result, with hourly wages dropping by as much as 70% for some workers. Qantas used this threat to compel workers to accept an austere new agreement, featuring a two-year wage freeze followed by annual wage increases of just 2%.[1] The same workers had earlier rejected that deal by an overwhelming 97% margin – but the threat of catastrophic wage cuts if the agreement were to be terminated was effective in changing their minds. In April the original Qantas proposal was accepted by the cabin crew employees.

This report estimates the lost income and superannuation that Qantas employees would have experienced as a result of the company's termination of their EA, and being placed on the Award. Depending on job classification, years of experience, and which division of Qantas they worked for, international cabin crew would have experienced catastrophic erosion of income, superannuation, and working conditions:

- Hourly wages could have been cut by 25% to 70%.
- That translates into annual income losses ranging from about $9,000 for entry-level flight attendants on company's lower wage scale, to a staggering $67,000 for senior Customer Service Managers on the higher wage scale.
- Income losses would cumulate over time, as the dollar gap between negotiated wages and the safety-net standard of the Award expands. Mid-career Flight Attendants stood to lose between $140,000 and $840,000 over a 15-year period following termination of the agreement. Those in more senior positions stood to lose even more.
- Wage cuts also result in lower superannuation contributions, lost investment income, and lower retirement incomes. Cabin crew employees would see their superannuation balances (after 15 years of work) slashed by as much as $130,000 – reducing retirement incomes by as much as $15,000 per year.

[1] Given current and expected inflation, this schedule would have translated into at least a 12% real wage reduction for cabin crew workers by the end of the agreement. More recently, following protected action balloting by workers in Qantas's domestic cabin crews, the company has adjusted its wage policy to 3% annual increases in the last two years of the agreement. That still leaves an approximate 10% real wage cut for covered workers.

- EA termination would also lead to dramatic erosion of working conditions and entitlements, including rest breaks, time between flights, and accommodation arrangements.

This report also estimates the total savings that would accrue to Qantas from termination of just the EA for its international cabin crew. The company stood to reduce labour costs by $63 million in just the first year, cumulating to as much as $1 billion over the next 15 years. Savings to the company (which now forecasts a strong profit this year, following a quick recovery from the COVID pandemic) from similar actions affecting its other enterprise agreements would be even larger.

The devastating impact of the threat of EA termination (in the wake of a 2015 court decision ratifying this tactic) clearly helps powerful companies like Qantas extract lower wages and conditions from their workers. This has clearly contributed to the unprecedented stagnation of Australian wages over the past decade. The scale of the losses to affected workers, and the enormous gains flowing to employers, reinforces the need for legislative reforms to close off this 'nuclear option' in industrial relations.

Introduction

The aggressive strategy of employers threatening to terminate an enterprise agreement during bargaining for a new one has become a common weapon in the arsenal of Australian employers attempting to suppress wage. The ability of employers to apply to terminate enterprise agreements outright dramatically alters the playing field of collective bargaining, by imposing an additional and enormous cost of disagreement on workers and their unions. Qantas's actions in 2022 bargaining with its international cabin crew staff constitute just one of many recent examples of employers seeking to utilise this provision to pressure workers into accepting inferior contract terms.[2] Industrial relations experts have come to refer to this strategy as the 'nuclear option':[3] blowing up the enterprise agreement entirely unless workers accept their demands. The practice became more common after a precedent-setting Federal Court decision in 2015 (in a case involving the Aurizon energy corporation in Queensland) which created more leeway for employers to strategically threaten, and in many cases achieve, termination of the agreement.

The threat posed to cabin crew employees by Qantas was hardly hollow. This paper estimates the loss of income those workers faced if Qantas's application was approved. Qantas employs about 2500 workers in its international cabin crew operations, under the terms of two different wage schedules. Depending on their job classification and contract provisions, workers stood to have their hourly wages cut by 25% to 70%. That

[2] For other examples, see David Marin-Guzman and Lucas Baird, "Qantas joins employer rush to rip up union controls," *Australian Financial Review*, 20 January, 2022, https://www.afr.com/work-and-careers/workplace/qantas-seeks-to-terminate-flight-attendant-pay-deal-20220120-p59pqg.

[3] See, for example, Emilia Terzon, "Qantas accused of taking 'the nuclear option' with flight attendants to 'blow up' their EBA," *ABC Online*, 20 January 2022, https://www.abc.net.au/news/2022-01-21/qantas-flight-attendants-workplace-rights-fair-work-union/100773168.

would translate into reductions of annual income ranging from about $9,000 for entry-level flight attendants on the lower wage scale, to a staggering $67,000 for senior Customer Service Managers on the higher wage scale. Those income losses would continue, and in fact widen, over time, as the dollar gap between negotiated wages and the safety-net standard of the Award naturally grows over time. Mid-career Flight Attendants stood to lose between $140,000 and $840,000 over a 15-year period following termination of the agreement. Those in more senior positions stood to lose even more. Finally, the life-altering impact of this 'nuclear' attack on wages and conditions would even follow affected workers into retirement: because of the negative impact of wage cuts on superannuation contributions and subsequent investment income, cabin crew employees would see their superannuation balances (after 15 years of work) slashed by as much as $130,000 – reducing their retirement incomes by as much as $15,000, every year until they die.

The ability of employers to request, and often achieve, unilateral termination of existing enterprise agreements has been an important factor in the erosion of collective bargaining in Australia – which in turn has contributed centrally to the sustained deceleration of wages across the Australian labour market.[4] Coverage by current enterprise agreements for private sector workers in Australia has been cut in half since 2013: from 22% in 2013 to just 10.6% as of March 2022.[5] The fact that employers have the option of applying for the outright termination of agreements, rather than being required to continue negotiating in good faith for their renewal, contributes both to the growing number of expired agreements and a loss of faith in the entire collective bargaining process. Disarming the 'nuclear option', so that employers are compelled to negotiate with their employees and relevant unions for renewal of agreements, will help to stabilise and rebuild collective bargaining in Australia. The proposed amendments to the *Fair Work Act* will curtail the ability of employers to apply for termination of an EA during negotiations for its renewal.

This report reviews the impacts of EA termination during bargaining in the following manner. First, we provide an introduction to the legal dimensions of EA termination under the existing provisions of the *Fair Work Act*, followed by a review of recent historical examples and precedents. We then consider the history of Qantas and its international cabin crew employees – as a case study in how this flaw in the *Fair Work Act* has been leveraged by employers to threaten their employees into accepting unfavourable agreements. Estimates are provided of the income losses to Qantas employees if Qantas had followed through on its threat (and its application was approved): in the current year, in future years, and even after retirement. The report

[4] For a detailed description of the dimensions, causes, and consequences of the decade-long stagnation in wages in Australia, see Andrew Stewart et al., *The Wages Crisis: Revisited* (Canberra: Centre for Future Work, May 2022), https://assets.nationbuilder.com/theausinstitute/pages/4052/attachments/original/1656022549/Wages_Crisis_Revisited_May2022.pdf?1656022549.

[5] Calculations from Attorney-General's Dept., "Trends in Federal Enterprise Bargaining," Historical Trends Data, March Quarter 2022, https://www.ag.gov.au/industrial-relations/publications/historical-trends-data-current-quarter; and ABS, *Labour Force, Australia, Detailed*, Data Cube EQ04.

concludes with a discussion of the Commonwealth government's proposed reforms, which will help to rid Australian industrial relations of this 'nuclear option'.

Enterprise Agreement Termination in the Fair Work Act

Prior to expiry, enterprise agreements can be terminated in two ways. Firstly, employers and employees can agree (by consent) to terminate an agreement.[6] This must be approved by the FWC.[7] Secondly, employers can request that employees vote for the termination of an agreement.[8] This requires taking all reasonable steps to ensure that employees have appropriate notice and opportunity before voting.[9] Termination proceeds only if the majority of employees vote to terminate.[10] In cases of enterprise agreements that cover multiple enterprises, then majority approval from each individual enterprise is required.[11] For the FWC to approve the termination under this process, it must be satisfied these procedures was followed correctly, that it is appropriate to terminate the agreement, and there are no reasonable grounds for believing employees have not agreed to the termination.[12] Terminating an agreement by consent or putting it to an employee vote is a relatively uncontroversial means of ending an enterprise agreement that for some reason no longer serves the needs of its relevant stakeholders.

However, after an enterprise agreement has expired, employers become able to apply for termination *without* employee consent.[13] Once an enterprise agreement passes its nominal expiry date, a party to the agreement can apply to the FWC for it to be terminated.[14] Parties to the agreement include the employer/s covered by the agreement, employee/s covered by the agreement, or an employee organisation covered by the agreement.[15] This capacity to unilaterally apply for termination has been weaponised by Qantas and other employers to pressure their employees to accept unfavourable terms in a new agreement – or even, in some cases, to cease collective bargaining altogether.

Once an application by one of the parties has been made, the FWC must terminate the agreement if it meets two conditions. Firstly, the FWC must be satisfied that terminating the agreement is not 'contrary to public interest'.[16] Secondly, the FWC must believe it is appropriate to terminate the agreement, taking into account the views of the employees, employers and employee organisations covered, and the consequences of termination

[6] *Fair Work Act* s 219.
[7] *Fair Work Act* s 219(2).
[8] *Fair Work Act* s 220.
[9] *Fair Work Act* s 220(2).
[10] *Fair Work Act* s 221(1).
[11] *Fair Work Act* s 221(2).
[12] *Fair Work Act* s 223.
[13] *Fair Work Act* s 225.
[14] *Fair Work Act* s 225.
[15] *Fair Work Act* s 225.
[16] *Fair Work Act* s 226(a).

on each of these parties.[17] The FWC *must* terminate if it is satisfied that both of these conditions are met. Clearly, the breadth and subjectivity of these terms give enormous latitude to the Commission in determining whether an agreement will be terminated. And the precedents set by several successful employer applications for unilateral termination reinforce the legitimate fear among workers and their unions that any employer application could potentially be successful. If approved, termination of the enterprise agreement is effective from the date given in the FWC decision.[18] At that point, wages and conditions can be changed unilaterally by the employer, potentially falling as low as the minimums established in the relevant Modern Award.

Context and History

Unilateral applications for termination by an employer were unusual for the first several years of operation of the *Fair Work Act*. It was widely appreciated that allowing an employer to terminate an agreement, especially in the context of ongoing negotiations for its renewal, would significantly undermine the bargaining power of employees.

Prior to 2015, FWC decisions were consistent with the assumption that it was not appropriate to terminate an agreement when there was reasonable prospect that bargaining would result in a new agreement.[19] Termination was considered to constitute an explicit interference in the bargaining process, that would alter the status quo in favour of the employer.[20] For employees, their wages and conditions could drop from levels specified in their existing enterprise agreement down to the safety net of the awards and minimum wage – a significant drop for most workers covered by enterprise agreements. This risk was initially identified and appreciated by the FWC, such as in its decision regarding *Royal Automotive Club of Victoria* in 2010. The Commission acknowledged that termination would significantly shift the balance of forces in bargaining,[21] and hence was inconsistent with *Fair Work Act*'s goal to promote good faith bargaining.

The terms of expired enterprise agreements remain in effect unless and until the agreement is terminated or replaced by a new one. This allows the parties to negotiate EA renewal without dramatic changes in existing employment terms and workplace practices in the interim.[22] In a 2010 case (*Re Tahmoor Coal Pty Ltd*), the employer's application to terminate came after eighteen months of negotiating.[23] Despite the length of those negotiations, FWC Vice President Lawler still concluded that although bargaining was protracted, it was not appropriate to terminate an agreement while

[17] *Fair Work Act* s 226(b).
[18] *Fair Work Act* s 227.
[19] *Re Tahmoor Coal Pty Ltd* (2010) 204 IR 243.
[20] *Re Tahmoor Coal Pty Ltd* (2010) 204 IR 243.
[21] *Royal Automotive Club of Victoria* [2010] FWC 3483.
[22] *SDV (Australia) Pty Ltd re SDV Australia Pty Ltd – Warehouse Collective Agreement 2008 NSW* [2013] FWC 5385.
[23] *Re Tahmoor Coal Pty Ltd* (2010) 204 IR 243.

there was reasonable prospect (including the option of taking industrial action) for an agreement to be reached.[24] Again, this was consistent with the traditional view that approving unilateral termination would constitute one-sided interference in the course of bargaining.[25]

However, this traditional logic was expressly overturned in 2015 with the *Aurizon* decision.[26] This decision approved termination of several of the company's EAs while bargaining was ongoing, supported by a broad reinterpretation of the purpose of the *Fair Work Act.* Essentially, although termination would disturb the bargaining positions of parties, the FWC found that this need not necessarily undermine good faith bargaining. Underpinning this was a belief that another object of the *Fair Work Act* – namely, promoting productivity improvements -- was better served by allowing termination rather than encouraging continued bargaining.[27]

Of course, this view itself begs another set of important questions about what constitutes 'productivity': employers regularly cite a desire for improved 'productivity', variously (and often incorrectly) understood to justify any cost-saving measure they wish to impose in their workplace. With this decision, the FWC signalled a willingness to terminate agreements that employers consider restrictive or unproductive, and created further latitude for overturning negotiated provisions that employers could argue were inefficient or undesirable on any number of subjective criteria. Indeed, the FWC justified its decision to terminate the *Aurizon* agreements on grounds that some of their provisions were "not common in other enterprise agreements".[28] This sets an extraordinary and worrisome precedent. The implication is that unions should not hope to negotiate innovative provisions, or otherwise advance benchmarks of normal workplace practice – since this could become grounds for abolishing enterprise agreements entirely. Since that precedent-setting *Aurizon* decision, the FWC has on several other occasions decided that the employer can define whether clauses in an agreement are harmful to productivity. For employers' self-interested judgments about what constitutes a 'productive' workplace to be given such preeminence in determining whether entire enterprise agreements should even be allowed to exist, constitutes a dramatic and worrying perversion of workers' rights to bargain collectively to improve wages and conditions – whether that is consistent with employers' preferences or not.

Following the *Aurizon* decision, the meaning of 'public interest' in decisions regarding EA termination also shifted. The FWC does not need to be satisfied termination is in the public interest, only that termination is not contrary to public interest.[29] This lowers the bar considerably, as employers only need to demonstrate that no outstanding reason

[24] *Re Tahmoor Coal Pty Ltd* (2010) 204 IR 243.
[25] *Re Tahmoor Coal Pty Ltd* (2010) 204 IR 243.
[26] See Creighton and Stewart (2016); *Aurizon Operations Ltd; Aurizon Network Pty Ltd; Australia Eastern Railroad Pty* (2015) 249 IR 55.
[27] *Mambourin Enterprises Ltd* [2020] FWC 4148 at [19].
[28] *Aurizon Operations Ltd; Aurizon Network Pty Ltd; Australia Eastern Railroad Pty* (2015) 249 IR 55 at [165].
[29] *Mambourin Enterprises Ltd* [2020] FWC 4148 at [34].

exists *not* to terminate. Public interest in this context is distinct from the interests of the parties – including the interest of covered workers in decent wages and conditions.[30]

The fact that enterprise agreements have expired, in itself, is hardly justification for their termination. In Australia's industrial relations system, the process of bargaining routinely extends beyond the expiry of the enterprise agreement. Parties to negotiation will defer agreement on various provisions hoping to attain some advantage or leverage as time passes. Bargaining can also involve numerous votes being put to covered employees, further prolonging the process.[31] This is intrinsic to the validity of bargaining, with the goal being reaching an agreement that employees and employers support. Moreover, if mere expiration becomes a legitimate reason for termination, employers will face a perverse incentive to delay the process in order to create conditions in which they could unilaterally apply for termination: "If employers can terminate agreements successfully, it will be their strategy to create an 'impasse' during negotiations, followed by an application to terminate at the Commission."[32]

Applying for termination (or even just threatening to apply for termination) has thus become an effective tactic for employers during negotiations. Most unilateral termination applications occur during charged negotiations between the parties.[33] Applying to terminate provides an employer with a bargaining advantage, as it creates a threatened drop of wages and conditions for employees. The employer does not even need to necessarily *apply* for termination for a threat to be effective – let alone have that application approved. An employer could simply indicate it has an intention of doing so in the future, and this would still shift the balance of power in bargaining.[34]

Collective bargaining is a vital means for workers in Australia to lift their pay and conditions, and offset the asymmetric bargaining power that employers possess relative to any individual worker. Collective bargaining advances wages and working conditions in a long-term, incremental process: in each round of bargaining, workers strive to make further incremental progress, negotiating improvements underpinned by the economic success and productivity of the firms they work for. Unilateral termination provides employers with the opportunity to suddenly turn back the clock on that historical process, ridding themselves of years of previously negotiated provisions. Moreover, the past gains embodied in an EA were never negotiated in a vacuum: they typically are linked to trade-offs and compromises affecting other aspects of an employer's operation. By giving employers the ability to re-impose terms and conditions (subject only to the minimum standards of the Award), termination allows

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[30] *Re Kellog, Brown and Root, Bass Strait (Esso) Onshore/Offshore Facilities Certified Agreement 2000* (2005) EOC 93-396; 139 IR 34.
[31] *Fair Work Act* s 181.
[32] Corey Rabout, "Qantas Cabin Crew Agreement 'Negotiations' Show that Wages Won't Grow Without Structural Reform," *Labour Law Down Under Blog*, 21 April 2022, https://labourlawdownunder.com.au/?p=1024.
[33] Shae McCrystal, 'Termination of Enterprise Agreements under the Fair Work Act 2009 (Cth) and Final Offer Arbitration' (2018) 31 *Australian Journal of Labour Law*.
[34] See Shae McCrystal (2018).

employers to eliminate EA provisions which they find unfavourable – while still benefiting from those trade-offs it may have achieved in the course of past negotiations.

The aggressive and strategic use of this 'nuclear option' by employers since 2015 has had a chilling effect on collective bargaining in Australia, and has been an important factor in both the erosion of EA coverage (especially visible in the private sector) and the consequent historic weakness of wages. At this moment in Australia's history, when wage stagnation has tipped into outright real wage declines (in the face of the post-COVID acceleration in inflation), it is vital that the integrity and effectiveness of collective bargaining be rebuilt. Eliminating the 'nuclear option' would be one important reform, among others, to reaffirm the right and effective ability of Australian workers to use collective bargaining as a path to better jobs and a fairer economy.

A Case Study: Qantas' Threatened EA Termination for International Cabin Crews

The COVID-19 pandemic obviously sparked an unprecedented and very challenging disruption in the airline industry. All stakeholders (airlines, unions, and governments) worked hard to address the crisis with a series of emergency measures. These included targeted fiscal supports from government for both workers and airlines; emergency revisions to the terms of enterprise agreements; and other actions to assist the industry to survive this catastrophe. Now airline travel has recovered nearly to pre-pandemic levels.

Unfortunately, in the course of that crisis, the greed of employers led them to take actions that shifted the burden of the crisis onto the backs of their workers, and undermined the industry's potential recovery. These included short-sighted efforts to eliminate or outsource important jobs in all facets of airline and airport operation: from onboard staff, to engineers and ground crew, to check-in and security staff. Qantas was at the leading edge of this effort. In 2020 it declared 8500 positions redundant, including through the outsourcing of 2500 jobs in baggage handling, ground support and cleaning. This outsourcing was later found to be unlawful – but Qantas refused to reverse its action.[35] Qantas also unilaterally declared a 'group policy' wage cap to apply to all of its enterprise agreements, consisting of a 2-year wage freeze followed by wage increases of just 2% in subsequent years.[36] Unlike governments (whose unilateral pay caps on public sector workers no doubt inspired Qantas's wage suppressing policy), Qantas has no legal or legislative power to unilaterally impose these caps. But its actions

[35] See Josh Bornstein and Anthony Forsyth, "'The Patricks of the Pandemic': Qantas and the Unlawful Outsourcing of 2000 Jobs," *Labour Law Down Under Blog*, 13 September 2021, https://labourlawdownunder.com.au/?p=980; and Lucas Baird and David Marin-Guzman, "Qantas Heads to High Court over 'Unlawful' Outsourcing," *Australian Financial Review*, 4 May 2022, https://www.afr.com/work-and-careers/workplace/qantas-outsourcing-unlawful-but-workers-won-t-get-their-jobs-back-20220503-p5ai7p.

[36] This policy has recently been unilaterally amended by Qantas, following protect industrial action balloting among domestic cabin crew staff and the acceleration of inflation, to feature 3% wage increases in the last years of the agreement.

nonetheless evidenced an aggressive effort to shift as much of the economic burden of the pandemic onto its workforce, and accelerate the return to profitability and higher share prices once flying returned. Qantas's aggressive decision to apply for termination of its EA for international cabin crews was intended to buttress this aggressive and unilateral approach to collective bargaining.

While the international cabin crew agreement was the first EA targeted with this strategy, Qantas clearly intended to send a signal to other employee groups that they would face similar sanctions if they dared resist the company's wage suppression demands. Meanwhile, the deliberate shedding of experienced, trained staff left the airline woefully unprepared to serve customers when air travel did return – with resulting and well-reported chaos hamstringing Qantas's operations throughout the recovery. Even then Qantas's leadership tried to shift blame and cost for these disruptions – with CEO Alan Joyce blaming "rusty" passengers for the chaos in airports.[37]

While Qantas's relentless cost-cutting was unpopular with flying customers, it was rewarded by investors who have viewed the airline as one of the strongest global carriers since the pandemic. The airline's profit outlook is very strong: it recently projected before-tax profit of $1.2-$1.3 billion for just the first half of the 2023 financial year, and share prices rose strongly after the announcement.[38] Indeed, the airline's share price has now recovered losses experienced early in the pandemic; at time of writing, Qantas shares were trading around $6 per share (equivalent to its average value in 2019, before the pandemic). Qantas executives have been personally rewarded, as well, by the airline's strong financial performance: CEO Alan Joyce took home total compensation of $5.5 million in the 2021 financial year, up 15% from 2020.[39] The company has even announced a major $400 million buyback of shares, further proof that its profitability and cash reserves are ample;[40] companies typically buy back their own shares when their cash flow exceeds the needs of prospective investments in growing the business, so this is another sign that Qantas's financial position is extremely strong.

It is clear, therefore, that Qantas's attack on the wages and conditions specified in its enterprise agreements could not be justified on grounds of financial desperation or operational necessity. The airline is positively regarded by investors – and its post-

[37] Peter Vincent and Aidan Wondracz, "Qantas Boss Alan Joyce Blames Airport Chaos with Kilometre-Long Queues and Huge Delays on Travellers Being 'Out of Practice' after Years of Lockdowns and Travel Bans," *Daily Mail*, 8 April 2022, https://www.dailymail.co.uk/news/article-10698595/Qantas-CEO-blames-airline-passengers-huge-queues-long-delays-packed-Sydney-Airport.html.
[38] Angus Whitley and Peter Vercoe, "Qantas Sees First-Half Profit of Up to A$1.3 Billion on Travel Demand," Bloomberg, 22 October 2022, https://www.bnnbloomberg.ca/qantas-sees-first-half-profit-of-up-to-a-1-3-billion-on-travel-demand-1.1831696.
[39] See Catie McLeod, "Qantas argues 'restraint' after CEO Alan Joyce pockets pay rise," *News.com*, 6 October 2022, https://www.news.com.au/travel/travel-updates/qantas-argues-restraint-after-ceo-alan-joyce-pockets-pay-rise/news-story/7c7c0c5b8af700fc1f68b5aa5415009e.
[40] Tom Richardson, "'Reckless': Analyst slams Qantas buyback," *Australian Financial Review*, 7 September 2022, https://www.afr.com/markets/equity-markets/reckless-analyst-slams-qantas-buyback-20220907-p5bg0t.

pandemic operational challenges resulted from short-sighted staffing reductions and other cost-cutting, not to the provisions of its EAs. Nevertheless, it used the atmosphere of crisis associated with the pandemic to justify its application to terminate the EA for international cabin crews (which expired at end-June 2021). In late 2021 it had demanded the covered workers and their unions accept an unfavourable new EA (incorporating the terms of its group-wide wage restraint policy, and several other cost-saving measures that would significantly undermine working conditions and job stability). Workers rejected that demand by a 97% margin in December. Weeks later Qantas applied for termination, citing an 'impasse' in the bargaining. After a return to bargaining, Qantas then won workers' approval for the original proposed EA. The threat of termination was clearly pivotal in shifting the course of negotiations in the airline's favour.

Terminating the EA, with workers potentially falling back onto the minimum conditions specified in the Modern Award, would have represented a dramatic reduction in wages, entitlements, and protections for employees. Details of the previous enterprise agreement are provided in Appendix A. Hourly wages could have declined by between 25% and 70% for international cabin crew staff, depending on their job classification and which segment of the EA they are employed under. Qantas international cabin crews operate under two separate sections of the collective agreement. One applies to so-called 'legacy' crew members hired before 2007, directly employed by Qantas itself (QAL). This category covers approximately 800 workers. Another 1700 cabin crew work for a wholly-owned subsidiary of Qantas that was established as a cost-cutting measure in 2007: Qantas Cabin Crew Australia (QCCA). That group receives lower wages and entitlements – although at the time still considerably superior to the terms of the Modern Award.[41] Within each of those groups there are several relevant classifications, including Flight Attendant, Customer Service Supervisor, and Customer Service Manager. (More details on the scale and distribution of wage losses resulting from termination are provided in the next section.)

Wage reductions would not be the only negative consequence resulting from termination of the EA. Various allowances specified in the agreement would also be reduced or eliminated entirely. For example, under the Award international flight attendants are entitled to one incidental allowance of $1.91 per hour. Under the EA, there up are up to 9 additional allowances paid on top of the hourly rate. These allowances consider compensation for clothes laundering, after-hours transportation, hairdressing, grooming requirements, and additional skills (such as for flight attendants who speak multiple languages).

Provisions negotiated in the EA also reflect the particular challenges of this occupation, and include innovative and customised arrangements for rostering and break periods.

[41] Following Award wage increases announced by the Fair Work Commission later in 2022, Award wages for QCCA international cabin crew fell below the new Award rates, and had to be increased further by the company to comply with the Award.

Under the agreement, an employee who undertakes flight duty for longer than 14 hours is entitled to a rest period of between 24 hours (if employed by QCCA) and 36 hours (if employed by Qantas). This is in stark contrast to the 'equal rest period' outlined in the award, which means an employee who undertakes 14 hours of flight duty would only be entitled to 14 hours of rest – before being potentially assigned to another long flight. Moreover, the EA specifies that an employee on flight duty beyond 14 hours must be afforded curtained bunks and seating for rest breaks; the Award has no similar provision. Employees under the agreement are also afforded an additional 2 days duty-free for every 56-day period, and there is a 30-day cap on standby days per year. In contrast, the award has no limit on the number of days employees can be required to wait on reserve. When flying, employees under the agreement have guaranteed provisions for accommodation and meal allowances. This includes ensuring hotel rooms have blackout curtains and are to a high standard of quality. In contrast, the Award sets out only that the employer must book rooms that are individual, quiet, and appropriate. Table 1 provides a summary comparison of several of those entitlements and working conditions issues, contrasting the existing EA with the Modern Award.[42]

[42] See Appendix A for a fuller description of the terms of the enterprise agreement (*Flight Attendants' Association of Australia-International Division, Qantas Airways Limited and QF Cabin Crew Australia Pty Limited Enterprise Agreement 2017 (EBA10))*, and Appendix B for a summary of the provisions of the Modern Award (*Aircraft Cabin Crew Award 2020*).

Table 1 **Comparison of Key Features of Qantas Enterprise Agreement and Modern Award**		
	Enterprise Agreement	**Modern Award**
Duty Free Days	**18** duty-free days for every 56-day period	**16** duty-free days for every 56-day period
Rest Period	**QANTAS:** Where planned duty exceeds 14 hrs rest period must be either 36 hours or 2 local nights **QCCA:** Where planned duty exceeds 14 hrs rest period must be 24 hours. If flight duty exceeds 18 hours then rest period must be 50 hours	Rest period equal to hrs of flight duty. 14 hours of flight duty entitles 14 hours rest. Over 17 hours of duty entitles 20 hours rest
Rest Breaks	Beyond 14 hours employees **must** have curtained bunks and seating	**No** curtained bunks or seating
Overtime	Work past the first 12 hours of duty paid at **200**%. Beyond 14 hours, the overtime rate is **250**%	Flat overtime of **200**%, applied only after 1872 hours/yr. No daily overtime
Stand-by	30 days cap on reserve	**No** limit to days on reserve
Leave Entitlements	*Paid Personal/Carer's Leave* **QANTAS:** 19 days in first year of service, 24 days in each subsequent year **QCCA:** 10 days in first year of service, 15 days in each subsequent year *Domestic and Family Violence Leave* 10 days paid per year *Upper Respiratory Tract Infection (URTI) Leave* **QANTAS:** 6 days paid per year **QCCA:** 1 day paid per year	PPL: 10 days per year DFV: 5 days unpaid per year URTI: 6 days per annum
Redundancy Pay	Employees receive 3 weeks' pay per year of service until 5 years of service. After 5 years of service, employees receive 4 weeks' pay per year and pro rata for each complete month of service. This means an employee who has completed 5 years of service would be entitled to 15 weeks' of pay. Maximum redundancy 95 weeks	Employees receive less redundancy pay per year of service than under the EA. An employee with 5 years service would receive 10 weeks' pay.
Uniforms	Employees **must** be provided with overcoat and handbag if prescribed. Additionally, female staff **must** be provided with either 6 pairs of pantihose or 3 pairs of supporting hose every two months. Employees **must** also be given an overnight bag	**No** provision of overcoat, handbag or overnight bag. **No** entitlement to pantihose or supporting hose
Accommo-dation	**First class** accommodation with specific conditions. Due regard **may** also be given to ensuring the accommodation is a reasonable distance from the airport.	Entitled to '**approp including** individual quiet rooms
Meals	Meal allowance pinned to cost of hotel accommodation	Entitled to meals of an 'appropriate standard'
Consultation	'Joint Consultative Committee' holds discussions on major changes. 'Planning & Scheduling Committee' holds discussions on changes to planning and scheduling procedures. Qantas must consult over introduction of a new aircraft.	**No** obligation to establish committee or pursue ongoing consultation
Source: Authors' compilation.		

Given these stark differences between the existing EAs and the Modern Award, it is clear that the threat to unilaterally terminate the enterprise agreement, and potentially impose the minimum conditions specified in the Modern Award, constituted an enormous threat to the well-being of Qantas workers. They stood to lose tens of thousands of dollars in income (amounts described in detail in the next section). But on top of that, the cancellation of long-negotiated protections and provisions that make airline work more bearable and sustainable for workers and their families would also constitute a transformative shock for these 2500 employees. Qantas's goal was to compel these workers to accept an unfavourable agreement, on pain of imposing something far, far worse. It is understandable these workers might be intimidated by this aggressive action, and ultimately accepted Qantas's original deal (despite the real wage cuts and other negative changes it will impose). But it is unconscionable that Australia's industrial relations system permits a powerful corporation to exercise such leverage over the lives of its employees – all the more so just as they, and the entire industry, were emerging from the unprecedented and frightening disruption of the COVID-19 pandemic.

Income Losses to Cabin crew Members from EA Termination

Had an agreement not been reached and the Fair Work Commission had approved Qantas's application to terminate its existing enterprise agreement for international cabin crews during the recent collective bargaining, approximately 2500 staff in that division of the airline could have experienced an immediate and in some cases catastrophic decline in wages and working conditions. This section analyses the scale of potential income losses for a range of relevant classifications. The income losses from being placed back on the Modern Award would be dramatic in any single year. But they cumulate over time, with the gap between wages under the existing agreement and the safety-net wages specified in the Award growing in future years (due to the compounding effect of annual wage increases). Moreover, the losses imposed on Qantas cabin crew members would even carry on after their retirement: as a result of reduced superannuation contributions by the company (tied to the steep reductions in wages).

Table 2 summarises the basic hourly wages received by each of the three main job classifications under each of the two components (QAL and QCCA) of the enterprise agreement. The relevant minimum wage specified in the Modern Award is also reported, from which the absolute and proportional decline in hourly wages that would have occurred for each group are calculated. Finally, on the assumption of an average 96 hours of work per month (consistent with a basic 'Part 1' roster arrangement), the annual income loss is also estimated. Obviously, actual specific hours worked vary widely across positions and individual workers; cabin crew who often work more than 96 flight hours in a month would experience even larger full-year income losses than are specified in Table 2.

Table 2 First-Year Income Losses from EA Termination					
	EA Hourly Wage	**Award Hourly Wage**	**Change ($)**	**Change (%)**	**Full-Year Loss[1]**
Legacy EA (QAL)					
Flight Attendant	$48.08 to $62.05	$22.64	-$25.44 to -$39.41	-52.9% to -63.5%	-$29,307 to -$45,400
Customer Service Supervisor	$71.51 to $75.90	$22.64	-$48.87 to -$53.26	-68.3% to -70.2%	-$56,298 to -$61,356
Customer Service Manager	$86.62 to $89.18	$30.86	-$55.76 to -$58.32	-64,4% to -65.4%	-$64,236 to -$67,185
Subsidairy EA (QCCA)					
Flight Attendant	$30.29	$22.64	-$7.65	-25.3%	-$8,813
Customer Service Supervisor	$48.80	$22.64	-$26.16	-53.6%	-$30,136
Customer Service Manager	$62.11	$30.86	-$31.25	-50.3%	-$36,000
Source: Calculations from Qantas Enterprise Agreement and Modern Airline Award, as described in appendices. 1. Assumes 96 hours per month as per Part 1 roster. 2. No CS Supervisor category is specified in the Award so base flight attendant rate applies.					

Cabin crew employed under the legacy enterprise agreement (working for Qantas directly) would suffer more dramatic income losses from termination, due to their higher starting compensation levels. Flight Attendants could lose between $29,000 and $45,000 income in just the first year after termination, rising to as much as $67,000 for Customer Service Managers. On average, workers employed under the QAL provisions of the EA would stand to lose over 60% of their base income.

For cabin crew workers employed by QCCA, the income losses are still dramatic – and all the more unaffordable, given the relatively modest incomes received by these workers even under the EA. Flight Attendants on the QCCA scale would see their incomes drop by 25%, representing an income loss of almost $9000 in just the first year. Those in higher Customer Service classifications would see their income cut more than in half, representing a loss of over $30,000 per year.

Unfortunately, those full-year losses are just the start of the dramatic reduction in incomes that would be experienced by international cabin crew under the termination of their enterprise agreement. Those income losses are repeated in subsequent years. In

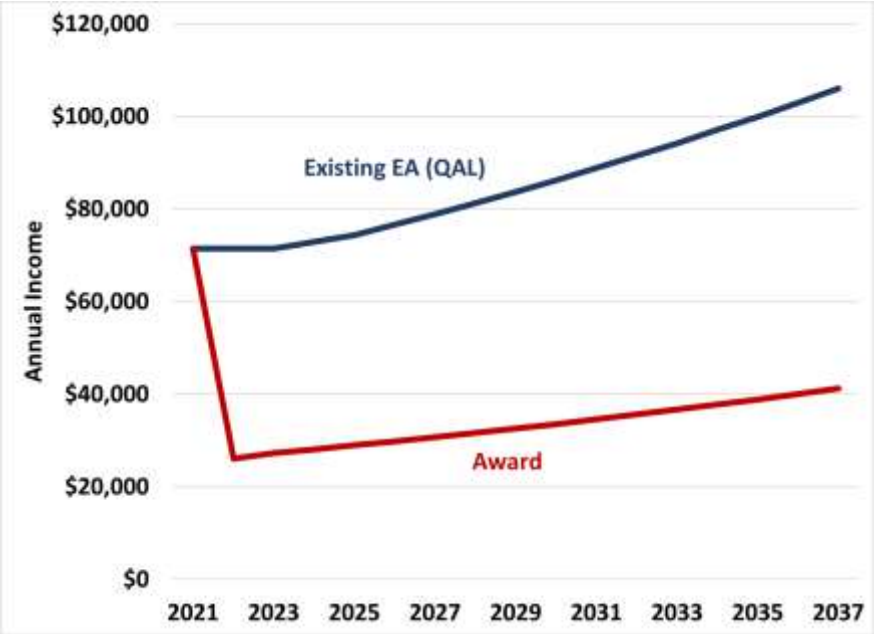
fact, the absolute scale of their annual income losses actually expands over time – and the cumulative value of lost income escalates exponentially.

We simulate the future income loss experienced by cabin crew staff as follows. Under Qantas's unilateral company-wide wage policy at the time,[43] crew experience a 2-year wage freeze, followed by annual wage increases of just 2%. Even with the EA maintained, this translates into a substantial reduction in real earnings for cabin crew members, after adjusting for current rapid inflation. Relative to current forecasts of consumer price inflation (expected by the RBA[44] to peak at 7.75% at the end of this year, falling back toward 3% by 2024), this implies a cumulative reduction in real earnings of about 12% over the first four years. It is little wonder, therefore, that Qantas cabin crew were initially and strongly opposed to the company's proposal.

Nevertheless, even under Qantas's wage suppression schedule, the gap between earnings under the EA and the fall-back minimums specified in the Award is maintained and ultimately expands. Figure 1 illustrates the comparison between incomes for a top-scale Flight Attendant under the legacy EA (including the company's unilateral wage policy) in the first four years, and the likely course of the Award minimums. Award wages are normally adjusted each year (in line with the National Minimum Wage decision); they have grown at an average annual rate of 3% over the past decade, and we project that continued pace into the future (albeit with a larger increment of 4.6% in the first year, reflecting the significant 2022 increase in Award rates specified recently by the Fair Work Commission[45]). Our forecast also assumes that wage gains in future Qantas EAs would recommence at 3% per year – equivalent to the long-term average of private sector EA wage gains over the past decade.[46] Finally, we assume a mid-career worker, with 15 years left in their career with Qantas; younger workers, with more of their careers ahead of them, would experience even larger cumulative losses (and bigger losses in retirement) than are indicated below. Losses would also be larger for workers in higher-wage customer service classifications, and for those who typically work more than the simulated 96 hours flight times per month.

[43] As noted above, wage increases in Qantas's policy have been increased to 3% in the last years of the agreement for all enterprise agreements implemented under that policy.
[44] See Reserve Bank of Australia, *Statement on Monetary Policy*, August 2022, https://www.rba.gov.au/publications/smp/2022/aug/pdf/statement-on-monetary-policy-2022-08.pdf, p. 59.
[45] See Fair Work Commission, "National Minimum Wage Order 2022," 15 June 2022, https://www.fwc.gov.au/hearings-decisions/major-cases/annual-wage-reviews/annual-wage-review-2021-22/national-minimum-wage.
[46] Calculations from Attorney-General's Dept., "Trends in Federal Enterprise Bargaining," Historical Trends Data, March Quarter 2022, https://www.ag.gov.au/industrial-relations/publications/historical-trends-data-current-quarter.

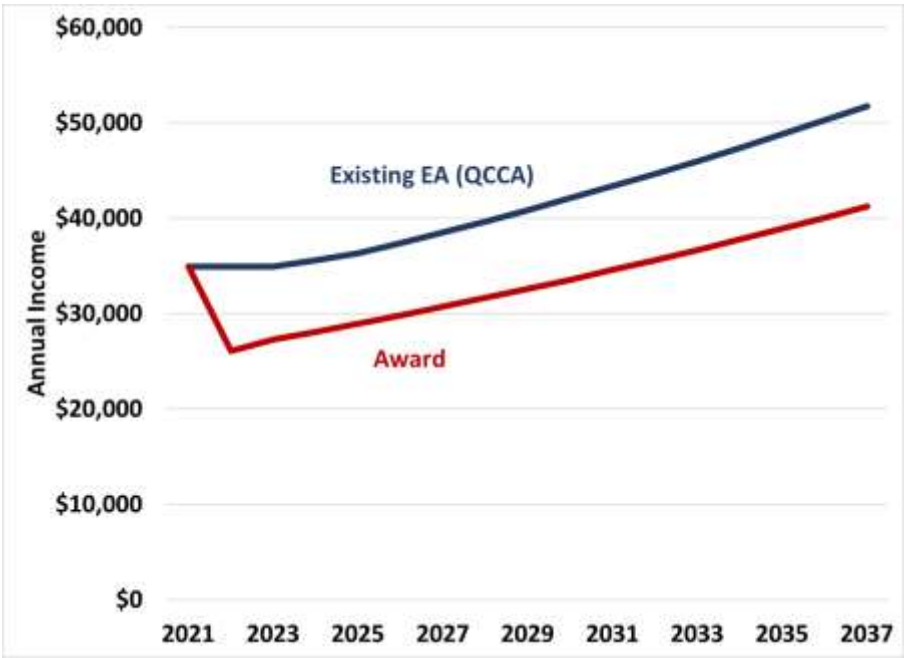
Figure 1. Wage Trajectories for Flight Attendants, QAL EA v. Modern Award



Source: Authors' calculations as described in text. Assumes maximum current wage rate in Flight Attendant classification.

After 4 years we assume EA wages begin growing again at a normal rate, and the already-large gap between EA and Award wage levels then begins to grow. The initial annual income loss of $45,000 for a top-of-scale Flight Attendant expands to almost $65,000 by the fifteenth year after EA termination.

Figure 2. Wage Trajectories for Flight Attendants, QCCA EA v. Modern Award



Source: Authors' calculations as described in text. Assumes maximum current wage rate in Flight Attendant classification.

Figure 2 presents the same projection for Flight Attendants under the QCCA enterprise agreement. In this case the initial wage loss is not as dramatic in proportional terms (equal to a 25% cut in income), but a similar cumulation of losses over time is projected. Once again, after 4 years of wage restraint under Qantas's current policy, wage gains return to a normal pace, and the gap between EA and Award income levels expands further. After 15 years, the Flight Attendant's yearly income is some $10,500 less on the Award than if the EA had been maintained – widening from the $8800 loss in the first year.

The impact of these continuing, compounding income losses for workers under either Qantas EA would be an enormous and catastrophic change in the lifetime earnings capacity of cabin crew members. Over the simulated 15-year span, top-of-scale Flight Attendants under the QAL wage schedule would incur a cumulative income loss of some $850,000 – imposing a dramatic and permanent reduction in living standards. The cumulative 15-year income loss for Flight Attendants under the QCCA EA reaches $140,000. Again, younger staff, those in higher-wage classifications, and those who work more hours will experience even larger cumulative income losses.

The financial pain threatened against these workers would not even end when they finish their careers with the airline. In Australia's retirement system, employer superannuation contributions are linked directly to wage payments through the Superannuation Guarantee. We can also estimate the impact of reduced incomes for Qantas cabin crew on their superannuation savings – and hence on their ultimate incomes in retirement. This simulation takes account of the current schedule of increases in the SG rate (which will rise to 12% of earnings by 2025), and makes conventional assumptions regarding taxation of super contributions and investment earnings, rates of return, and fees.[47] Cabin crew members would receive much smaller employer contributions to their superannuation funds each year after the termination of the EA. And that damage would be compounded by the loss of investment income over time on those (foregone) contributions.

A Flight Attendant with 15 years of remaining service under the QAL agreement would finish that period with a superannuation balance some $130,000 lower than if the EA had been maintained. A Flight Attendant under the QCCA agreement would lose $22,000 in superannuation balance after 15 years. In either case, super losses would be larger for workers in higher wage classifications, those with more than 15 years remaining service, and those working longer hours. Based on typical lifespans and annuity parameters, those reductions in superannuation balances on retirement will result in reductions in annual post-retirement income flows for these workers equivalent to between $2,500 and $15,000 per year.

[47] The simulation assumes a 7.5% average return on investments, 2.5% inflation rate, and 0.85% annual investment fee. These assumptions are consistent with the simulation model presented by the Australian Securities and Investment Commission, "Superannuation Calculator," https://moneysmart.gov.au/how-super-works/superannuation-calculator.

The combination of immediate income losses, cumulating wage losses in future years, and loss of superannuation contributions and investment income would thus produce a life-altering retrenchment in living standards for Qantas's cabin crew – coming on the heels of the unprecedented disruption and income losses resulting from the COVID-19 pandemic. For Flight Attendants and other staff working under the legacy QAL provisions, losses in income and superannuation could cumulate to over $1 million for a typical mid-career worker. For those working under the QCCA arrangement, the losses are smaller but still enormous: $160,000 or more over the first 15 years (and even larger cumulative losses for younger workers).

The ability for Qantas to threaten its staff with such a drastic and permanent shock to their earnings capacity clearly constitutes a 'nuclear option' in the minds of those workers and their families. The threat of such enormous income reductions (between 25% and 70%), sustained over time, and then producing significantly lower retirement incomes, naturally undermines the confidence with which workers can participate in collective bargaining with their employer. The company's power to apply for (and quite possible achieve) unilateral EA termination obviously distorts the process of bargaining: even when it is not used, it results in wage suppression, emotional and financial stress, and growing inequality in society.

Cost Savings to Qantas from Termination

On the flipside of the dramatic income losses that would be experienced by Qantas cabin crew as a result of the unilateral termination of their enterprise agreement, are very large cost savings accruing to the company as a result of lower labour costs. Here we estimate the aggregate value of labour cost savings that could have flowed to the airline as a result of EA termination. This requires summing labour cost savings across the population of cabin crew staff, proportionately according to their wage classification and the section of the EA they are employed under.

A total of around 2500 international cabin crew were covered by the recent collective bargaining. Close to one-third were working under the provisions of the 'legacy' enterprise agreement signed directly with the airline (QAL); the remainder work for the airline's QCCA subsidiary, under lower wages and conditions. We assume that 80% of the staff in each category are employed as Flight Attendants, 10% as Customer Service Supervisors, and 10% as Customer Service Managers. We estimate savings per worker at the midpoint between the low and high wage rates within each classification. We consider the company's potential savings in lower wage costs, as well as corresponding reductions in superannuation contributions (evaluated at the current SG rate of 10.5%).

Table 3 Initial Qantas Cost Savings from EA Termination		
Group	**Workers Affected**	**First-Year Savings ($m)**
QAL	800	$37.4
QCCA	1700	$25.7
Total	2500	$63.1
Source: Calculations from Fair Work Commission sources as described in text. Includes wages and superannuation contributions.		

Table 3 summarises the results of this cost savings simulation. Qantas would save as much as $37.5 million in just the first year as a result of the termination of the QAL portion of the enterprise agreement, and placing those workers onto the minimum conditions of the Award. These savings are proportionately greater because of the larger wage reductions experienced by those higher-waged cabin crew members. The company would save another $25.7 million in the first year from termination of the EA covering the larger group of employees working under the QCCA portion of the EA. Combined, Qantas would save $63.1 million in just the first year from this termination. This estimate is conservative, in that it assumes an average of 96 flight hours per month across the workforce; longer hours worked by some staff will enhance the savings to the company accordingly. This was a powerful motivation for Qantas to utilise the extraordinary provisions of the *Fair Work Act* allowing for termination on the employer's unilateral request.

Of course, just as with the income reductions experienced by individual workers, the labour cost reductions attained in the first year are repeated and even expanded in subsequent years that the workers are kept on the Award. Projection of those future savings for Qantas is difficult, depending on the demographic status of workers in each of the two categories of the enterprise agreement. Since workers paid under the better QAL provisions are older, on average, they will retire sooner, replaced by workers who would have been paid according to the QCCA provisions; that would reduce the proportionate savings to Qantas from the termination over time. Nevertheless, on the assumption that normal wage gains would recommence under the EA after 4 years of Qantas's current wage restraint schedule, the cumulative savings to Qantas from termination of these EAs over the next 15 years would approach $1 billion. Qantas has several other enterprise agreements with other groups of employees; the financial lure of terminating those agreements, and placing more staff on Award terms, would be even larger.

Conclusion and Policy Recommendations

The aggressive use of the 'nuclear option' by employers, threatening to terminate expired EAs in order to exert leverage during negotiations for their replacement, constitutes a one-sided and destructive distortion of normal collective bargaining practices and principles. Qantas's successful use of this threat to compel its international cabin crew workforce to accept a very unfavourable EA (one that will impose a 12% reduction in real wages in just the first 4 years) is only one particularly telling illustration of how employers use this weapon. In the absence of legislative reforms closing off this strategy, Qantas would almost certainly make similar threats in negotiations with its other employee groups – and in light of the experience with the international cabin crew negotiations, it doesn't even need to make that threat explicit (with a formal application to the FWC) to undermine the bargaining power of workers and their unions. The growing use of this destructive and aggressive strategy by employers across many industries (from transportation to marine work to construction to higher education) confirms that threats of unilateral termination have had a substantial impact in undermining collective bargaining for Australian workers.

To end this practice, and prevent further negative consequences for wages and working conditions from unilateral employer terminations, the Commonwealth government has proposed amendments to Section 226 of the *Fair Work Act*. In the words of the Bill's explanatory memorandum, these reforms:

> "…Would stop the practice of employers applying unilaterally to the FWC for termination of a nominally expired enterprise agreement, where termination would result in reducing employees' entitlements other than in prescribed circumstances. That includes situations where the threat of termination may disrupt bargaining for a new enterprise agreement."[48]

A new subsection of the *Fair Work Act*, 226(4), explicitly addresses the situation of applications for termination occurring during bargaining for a replacement EA. It would instruct the FWC to examine whether bargaining for a new EA is occurring, and whether termination would adversely affect the bargaining position of covered employees. The intent is to prevent termination applications from being used as a bargaining tactic.

It is important to note that employers still have avenues to seek termination of EAs that are no longer relevant in their workplaces, in conjunction with their employees and covered unions. And unilateral requests for terminations are still possible if the FWC is satisfied that the continued operation of an EA poses a significant threat to the viability of a business carried on by the employer, or employers, covered by the agreement; or

[48] See Item 471 of the explanatory Memorandum for *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022*; https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=tax%20laws%20amendment%20(2012%20measures%20no.%206)%20bill%202012%20Dataset:billsCurBef;rec=0;resCount=Default#_Toc117498132.

that termination would reduce potential job losses for employees covered by it. The proposed reforms would also create a new sub-section of the Fair Work Act, Section 226A, guaranteeing termination entitlements for employees (such as redundancy payments) provided for under an EA that was terminated on one of the above grounds.

The proposed reforms to the termination provisions of the Fair Work Act therefore constitute a sensible, incremental approach for preventing the most aggressive use of termination procedures to undermine workers' bargaining position during renegotiation of enterprise agreements. Ample provisions still exist for terminating EAs which have genuinely outlived their usefulness (not to mention so-called 'zombie' agreements inherited from pre-*Fair Work Act* times, which will face an automatic sunset under other provisions of the new legislation). But where workers and their unions are engaged in renegotiating expired EAs, which typically embody terms and conditions gradually built up over many years of bargaining progress, the opportunity for employers to dispense with all of those provisions through unilateral termination is being foreclosed. In other words, the 'nuclear option' is being disarmed. This will help to establish a more effective, constructive, and fair playing field for collective bargaining, and is thus an important step in reversing the erosion of collective bargaining which has so badly undermined wages and working conditions in Australia.

Appendix A: Summary of Qantas Enterprise Agreement

Flight Attendants' Association of Australia-International Division, Qantas Airways Limited and QF Cabin Crew Australia Pty Limited Enterprise Agreement 2017 (EBA10) ('the agreement')

The agreement is divided into three core sections. Part 1 applies to employees employed by Qantas Airways Limited (**Qantas**). Part 2 applies to employees employed by QF Cabin Crew Australia Pty Limited (**QCCA**). Part A applies to employees of both Qantas and QCCA.

I **QANTAS** AND **QCCA**

The following conditions apply to employees employed by both **Qantas** and **QCCA**. For every 56-day bid period, employees receive 18 designated duty-free days. For every 6 hours employees must be given a 20-minute break, and for each additional 4 hours after that employee receive a further 20-minute break. Employees must have suitable rest facilities, and if working beyond 14 hours they must have curtained bunks and seating. Employees who are away from their home on duty must be provided with first class accommodation, with several accommodation standards. There is also an agreed allowance for meals to be paid for stops in slip ports.

The dispute settlement procedure includes multiple points of referral to employee associations. The agreement also establishes a rolling committee for 'Planning and Scheduling', made up of four company representatives and four employee representatives. The agreement also provides for the establishment of a Joint Consultative Committee to facilitate discussions between employee representatives and the company. If Qantas is considering the introduction of a new aircraft, then the company must consult with the union as soon as a decision is approved and the ASX requirements have been met. Matters for consultation include considering the rostering and allocation of work impact, galleys and work practices, training requirements for crew and any impact on the tripartite divisional flying agreement.

A redundancy package is available to affected employees: 3 weeks' pay for each year of service up to and including 5 years' service. Thereafter, 4 weeks' pay for each completed year of service over 5 years and pro rata for each completed month of service. The agreement also requires that employees must be offered options for re-employment and redeployment if available, as well as financial counselling and outplacement services. For both QAL and QCCA crew the maximum redundancy is capped at 95 weeks.

Uniforms must be provided by the company and replaced for typical wear and tear. If guidelines prescribe a particular overcoat or handbag this must be provided to employees. Female staff are to be provided with either 6 pairs of pantihose or 3 pairs of an agreed brand of supporting hose every two months. Employees must be provided with an overnight bag. All proposed changes to uniform must follow consultation.

Pay Rates (maximum within classification)

Type	Qantas (hourly)	QCCA (salary)
Trainee Flight Attendant	$839.21 (weekly)	$43,639
Flight Attendant Entry	$48.48	$46,337
Flight Attendant	$62.05	$47,264
Customer Service Supervisor	$75.90	$76,132
Customer Service Manager	$89.18	$96,896

Overtime

Hours	Payment
Flight duty more than 12 hours	Payment of 1 hour for each hour
Flight duty more than 14 hours	Payment of 30 minutes for each hour, on top of the 1 hour addition
Ground duty more than 8 hours	Payment of 30 minutes for each hour
Ground duty more than 10 hours	Payment of 30 minutes for each hour, on top of the 30 minute addition
Rest period reduced	Payment of 1 hour for each hour the rest period is reduced

Leave

Annual	42 consecutive days for each 12 months of continuous service
Long Service Leave	3 months long service leave after 10 years of continuous service

Type	Time Period	Amount
Personal	First year of service	19 days (10 days)
	Second and subsequent years of service	24 days (15 days)
Sick Leave (taken from Personal)	First year of service	10 days
	Second and subsequent years of service	15 days

	URTI	6 days (1 day)
Compassionate	2 days per permissible occasion	
Carers	10 days personal leave taken as carers	
Domestic and Family Violence	10 days paid leave per year	

Notice for Redundancy

Length of Service	**Notice Period**
Under 6 weeks	1 week
Between 6 weeks and 6 months	2 weeks
Over 6 weeks	4 weeks
+ If over 45, with 5 years of continuous service then the period of notice is increased by 1 week	

The notice period does not begin until the employee is at their home, they must be given free travel to their home base if needed.

II **QANTAS**

The following conditions apply only to employees under **Qantas**, not **QCCA**.

The minimum rest period after flight duty is (planned flight time of that duty period) + (planned flight time between 10 and 8am). Rest periods must not be less than 12 hours or more than 20 hours. If the preceding flight is longer than 14 hours, or deadheading is longer than 24 hours, then the minimum rest must be either 36 hours or 2 local nights. The agreement also accounts for a base turnaround time as the minimum period of rest at a home base after spending time away.

There is a minimum six-month period of part-time employment required before employees can transfer to full time. Transfer to full time employment relies on operational requirements and is on a swap basis, where a full-time and part-time employee must both nominate to swap classifications. The company will not compulsorily re-deploy employees from full time into part-time and vice versa. Employees receive pay protection guarantees if through no fault of their own they lose time from their projected pattern of hours.

Pay Additions

Type	**Amount**
Daily skills allowance (specialist work – training/safety groups)	$85 per day
Daily travelling allowance (overseas)	$64.66 per day
Daily travelling allowance (domestic)	$29.57 per day
Daily travelling allowance (expenses) (overseas)*	$56.08 per week for female employees $58.02 per week for male employees
Language utilisation allowance**	$1.20 per duty hour
Skills allowance (using priority 1 language)	$15 per week
Skills allowance (using priority 2 language)	$10 per week

*Daily travelling allowance must also pay compensation or expenses incurred while flying overseas. This includes for laundering, after hours transportation, telephone costs, shoes, hairdressing, special grooming requirements and all other additional costs not encountered by ground employees.

**Must be using a 'priority language' while working and possess a language badge.

III **QCCA**

The following conditions apply only to employees under **QCCA**, not **Qantas**.

Pay Additions

Type	**Amount**
Incidentals	$3.26 per hour
Providing ground training or complete ground duties in a ground-based role	$85 per day

Appendix B: Summary of the Aircraft Cabin Crew Award 2020

This award blends conditions for crew members flying international, domestic and regional routes. Crew members can be appointed by agreement to any of these three conditions or a mix of international and domestic. Broadly this award reflects standard award provisions or refers to the minimum conditions set out by the NES for its base standard. Consultation, dispute resolution procedures and flexibility arrangements are all standard provisions.

I GENERAL AWARD CLAUSES

A *Employment Classifications*

Full-time employees are engaged for between 1716 and 1872 hours per annum. Employees engaged either part-time or casual must be rostered a minimum of four hours per shift. Casual loading is 25%. Casual conversion to full-time or part-time employment relies on the NES.[49]

B *Minimum wage*

Employee classification	**Minimum weekly rate (full-time employee)**	**Minimum hourly rate**
Cabin crewmember	$860.50	$22.64
Cabin crew supervisor (narrow-bodied, 4 or more crew)	$1004.00	$26.42
Cabin crew manager (wide-bodied)	$1172.60	$30.86

Narrow-bodied aircraft are aircraft with a single aisle. Wide-bodied aircraft are aircraft with more than one aisle.

C *Duty Periods*

Crew members can be scheduled to work in *any* part of the world and covering anything within the limit of the employee's skill and training.[50] Duty period encapsulates all time spent operating as a crewmember in flight, on the ground between sign-on and sign-off, deadhead travel (all travel performed that is not as an operating crewmember in flight), time on airport reserve duty, time on reserve duty at home, time in emergency procedure practices, uniform fittings, time spent as assignable to a duty or vacancy and time spent when required for a duty not specifically covered here.

[49] See NES Division 4A s 66B.
[50] Caveats include right to refuse work in 'warlike' or 'hostile' circumstances.

For international flights 'sign-on' refers to the time a crew member is required to report for duty. This must be at least 75 minutes prior to the departure of the flight while at home, and 60 minutes while at another port. This is marginally more for domestic and regional flights, which leave 45 minutes for sign on. 'Sign-off' must occur no less than 15 minutes after the engine shut-down of a flight. Layovers are more than 9 consecutive hours free of duty between duty periods.

International crew members can be on stand-by for a maximum of 12 hours. Within this period crew members may be required to report for duty with 120 minutes notice. This only applies when crew are based at their home. Reserve applies to crewmembers flying domestic or regional. A reserve crew member who is called out for duty must be able to sign on at the airport no later than 90 minutes after receiving the duty call out. Transport to and from the airport will be paid for by the employer if required to sign on within 90 minutes.

Periods in the roster that are not a duty period, rest period, or rostered day off can be assigned as reserve duty. This can be at the airport, home or elsewhere. When on reserve duty, employees must be contactable and ready to perform duties within 90 minutes of contact. Employees can be released from reserve duty at any time. The difference between standing reserve duty and being called in to sign on is credited on a 1:4 basis. For example, starting reserve duty at 9am, but commencing work at 11am, produces a rostered credit of 30 minutes. If on reserve duty at the airport, then all hours spent on reserve are credited towards the rostered total.

D *Annual Leave Entitlements*

The annual leave entitlements are the same as the NES. Where an employee accrues excessive leave (beyond 84 days) the employer can direct them to take leave or the employee can give notice of intention to take leave. Annual leave loading is 17.5% of the minimum hourly rate.

E *Additional Leave Entitlements*

Majority of leave entitlements are unchanged from the NES standard. The following entitlements flow from the NES in the award.

- Personal, carer's and compassionate leave.
- Parental leave.
- Community service leave.
- Unpaid family and domestic violence leave.

The award entitles crew members to 6 working days' leave per annum for sickness associated with upper respiratory tract infection (URTI). Employees on leave due to injury or illness will remain until designated fit per the Civil Aviation Orders or Civil

Aviation Regulations (CARs) standards of flying. Employees are not entitled to any leave during the payment of a workers compensation scheme.

F *Public Holidays*

There is no public holiday entitlement under the award. Section 25.1 sets out minimum wage and annual leave entitlements that have *already* taken into account compensation for public holidays per the NES.

G *Termination and Redundancy*

An employee must give the employer notice of termination. Standard periods of notice apply as in other awards. If an employee does not give notice the employer can deduct wages due to the employee (no more than one week's wages). The deduction must not be unreasonable. Employees are entitled to at least one day time off without loss of pay in order to find other employment. If an employee is terminated away from their home base, they must be reimbursed the cost of transport for themselves, their family and possessions back to their home base.

A standard redundancy clause applies as in other awards. Redundancy pay is provided for in the NES. If because of redundancy an employee is transferred to a new duty with a lower rate of pay, the employer can either give the employee notice of transfer (like notice of termination) or transfer without notice but paying out the difference of hours worked between the roles. An employee can leave during the notice period but will not be entitled to be paid out for the remainder of the notice period if they had stayed on. As under termination, employees entitled to at least one day time off without loss of pay in order to find other employment. At the request of the employer, employee needs to produce proof of interview attendance with a stat dec.

II SCHEDULES

In this award, schedules A and B relate to crew flying domestically and regionally, with schedule C applying to crew flying internationally. The entitlements between domestic and international are broadly similar. Some regional entitlements have been noted to demonstrate their contrasting conditions.

A *Hours of Work*

Ordinary hours of work for international crew members are 1872 hours each year. Planned hours are:

(a) over 13 roster periods of 28 days of up to 144 duty hours plus 'reasonable' additional hours;

(b) over 12 roster periods of a calendar month of up to 156 duty hours plus 'reasonable' additional hours; or

(c) over a 14 day roster period up to 72 hours per fortnight plus 'reasonable' additional hours.

Ordinary hours include weekends and public holidays. Employees can be required to work in any pattern of hours, including through weekends and public holidays.

B *Rostering*

The employer must provide employees with a roster at least 7 days prior to the commencement. The employer can reassign employees on alternative duty during the roster period only for valid operational reasons. Operational reasons are undefined in this award.

C *Meal Breaks*

A crewmember flying internationally is entitled to a 20-minute paid break which must be within 6 hours after sign-on unless exceptional circumstances. For each additional 4 hours, the employee is entitled to further 20-minute paid meal breaks. Breaks can be taken in flight or at a turn around that does not affect operations or service delivery.

D *Rostered Days Off*

Employees are entitled to 8 days off at their home base for each completed 28-day period. The employer can contact employees on a rostered day off and request employees to work. Employees can refuse if (a) there is a risk to health and safety; or (b) employees personal circumstances including genuine family or carer's responsibilities. The employer can call an employee in to undertake duty as required. If assigned to a duty on a rostered day off, employee will be assigned a substitute day off through agreement. Comparatively, crewmembers flying regionally are entitled to a substitute day off and an allowance of $123.04 for each day.

E *Duty Limitations and Rest Periods*

Maximum duty time for international crew set out below.

Duty type	**Planned duty hours**	**Unplanned duty hours**
Non-flying duty	10	N/A
Stand-by (stand-by credits don't count towards duty limitations)	12	N/A
Only operating—more than one sector	14	20
Only operating—one sector	18	20
Operating (must not exceed 14 hours) followed by deadhead	18	20
Deadhead followed by operating	14	20

Deadhead followed by non-flying duty followed by deadhead	14	20
Only deadhead	24	26

F *Rest Period*

Minimum planned rest duty for international crew following sign-off set out below.

Duty	**Planned rest hours**	**Unplanned hours**
0 to 14 hours	12	10
14 hours 1 min to 17 hours	equal to duty hours	12
17 hours 1 min to 24 hours	20	17

G *Overtime*

All time worked in excess of 1872 hours in a year, or in excess of a crew member's roster cycle maximum is paid at a penalty of 100%.[51] Where unplanned and it exceeds the daily limit, crew members can agree to an extension for appropriate payment.

H *Relocation*

Employees are entitled to 'reasonable' expenses incurred by them in relocating to another base for longer than six months. This only applies when the employer has requested the move and will not be awarded if the employee has requested the move.

I *Uniforms*

The employer provides uniforms and must replace from time to time. Employee must replace at their own cost if needed, except for fair wear and tear. Uniforms must return to employer upon end of employment. If required to attend a fitting, employees reimbursed duty credits for 30 minutes. In contrast, crew members flying regionally are entitled to a uniform and grooming allowance of $152.13 per month.

J *Accommodation*

Accommodation provided to employees away from their home base will be 'appropriate accommodation and transport between the airport and hotel'. The minimum standard for appropriate accommodation is quiet and free from factors that reduce rest with separate rooms for crew members. Employees on international duty will be provided with all meals of an 'appropriate standard'. An allowance may be paid instead, but this must reflect community norms in the expected quality and adequacy of meals intended

[51] C.6.1(a).

to be covered. International incidental allowance is paid to employees on duty at $1.91 per block hour or part thereof.

Crew members flying regionally are entitled to a disability allowance of $95.23 per night and $137.56 for accommodation and meals. Crew are also entitled to a layover allowance of $22.56 per layover. If stopped for four hours or more, regional crewmembers are entitled to reimbursement for cost of obtaining rest facilities that allow for horizontal rest. Crew members are also entitled to a telephone allowance, compensation for loss or damage to personal effects of up to $2234. If travelling abroad, employer must provide regional crew members with insurance at $1975. Crew members are also provided with death benefits allowance of over $158,099, or if claim is rejected will be awarded $393.96 per annum. Crew are also entitled to reimbursement for any legal claims made against them while on duty.

L *Passport and Visas*

If employer directs employee to obtain a passport and visa(s), employer bears all costs.

M *Ground Transport Allowance*

Employee without a car must be provided with transport between the airport and a city office if they are signing on between 8pm and 7.30am. If crew is on an overnight, then they must be provided with transport between airport and accommodation within 15 minutes of the estimated time of arrival.