

# TERMINATION OF AGREEMENTS & SUNSETTING ZOMBIE AGREEMENTS

## What is it, and what is new?

**The circumstances in which agreements can be terminated are significantly limited.**

Agreement-based transition instruments made before 2009 (“zombie agreements”) will automatically sunset on 6 December 2023, unless an application is made and granted to extend the agreement.

## What are the key rights and requirements?

### Terminations

- » A union, employer or employee covered by an agreement can apply to terminate that agreement.
- » If parties consent to the termination, an agreement is terminated when a majority of employees balloted support the termination.
- » If a party does not consent to the termination, the party seeking the termination must set out whether the termination is requested for reasons of unfairness, lack of coverage or business viability. Each ground has its own prerequisites which must be met. The Fair Work Commission must also have regard to the views of employees and consider the status of any current agreement negotiations, and whether termination would adversely affect the employees’ bargaining position.

### Zombies

- » Before 6 June 2023, any employer with a zombie agreement must notify each employee that they’re covered by a zombie agreement, and that the agreement will terminate on 6 December 2023. An employer that doesn’t notify their employees is liable to a civil penalty.
- » An employee, union or employer covered by a zombie agreement may apply before 6 December 2023 to extend the operation of the agreement for up to 4 years. The FWC can only grant the application if it is satisfied that bargaining has commenced for a new agreement and that the employee (or employees as a whole) are better off under the agreement than the relevant award.

# Strategic considerations

## Coordinate:

- » How do we map and coordinate our strategy for employees who will be subject to the new zombie sunset provisions?
- » How do we assist each other to identify and map long-expired agreements that should potentially be terminated?

## Growth:

- » Threats of agreement terminations can no longer be used to try and weaken workers during bargain. How do we educate and embolden workers now that this is no longer a threat?

## Precedent:

- » Early termination cases will have a critical effect in interpreting the test requirements with the termination mechanisms. How do we make sure we run, or defend, cases as best as possible to secure the best possible outcomes?

**EQUIP  
PLAN  
WIN**

**EQUIP**

- **IR LAW FORUMS**  
(7 - 19 Feb) - Respect, Equity, Bargaining 1/2/3 and Electives
- **LEGISLATION BRIEFING NOTES**
- **FACT SHEETS**

**PLAN**

- **STRATEGIC LEADERSHIP MEETING (20 - 21 Feb)**
- **UNION INTERNAL PLANNING**

**WIN**

- **MOVEMENT WIDE EDUCATION**
- **COORDINATION**
- **GOOD PRECEDENTS**
- **GROWTH AND POWER**