



2016–2017 ANNUAL REPORT

ACCESS TO JUSTICE



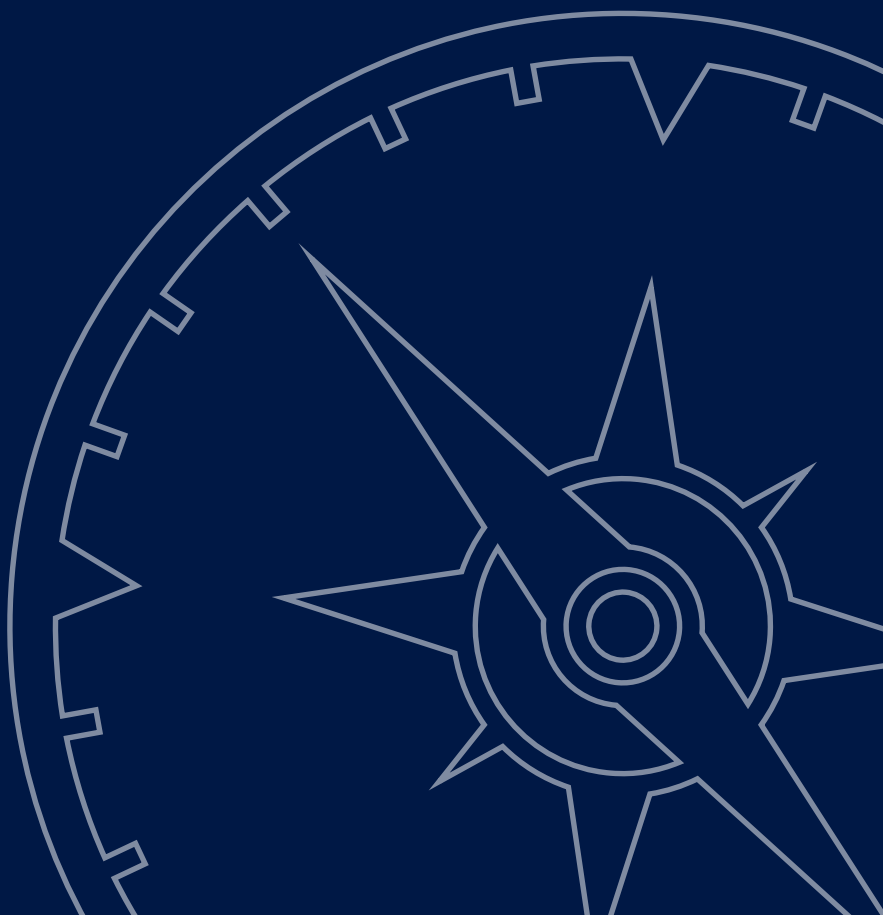


FairWork
Commission

2016–2017

ANNUAL REPORT

ACCESS TO JUSTICE



FAIR WORK COMMISSION

AUSTRALIA'S NATIONAL WORKPLACE RELATIONS TRIBUNAL

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ISSN 2204-3799 (printed copy)

ISSN 2202-3802 (online copy)



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This publication is designed by **Papercut Graphic Design** and edited by **WordsWorth Writing**.

This publication is available in PDF and accessible format at www.fwc.gov.au/annual-report



Australia's National Workplace
Relations Tribunal

21 September 2017

Senator the Hon. Michaelia Cash
Minister for Employment
Parliament House
Canberra ACT 2600

The Honourable
Justice Iain Ross AO
President

Bernadette O'Neill
General Manager

Dear Minister

We are pleased to present to you the Annual Report of the Fair Work Commission for the financial year ended 30 June 2017.

This report is provided pursuant to s.652 of the *Fair Work Act 2009* and in accordance with s.46 of the *Public Governance, Performance and Accountability Act 2013* and the Public Governance, Performance and Accountability Rule 2014.

Yours sincerely

Justice Iain Ross AO
President

Bernadette O'Neill
General Manager

READERS' GUIDE

This annual report informs the Australian Parliament and public about the Fair Work Commission's performance and compliance with its obligations during the 2016–17 financial year.

OVERVIEW

The overview includes reports from the President and General Manager and provides information about the Commission, including its organisational structure, Members, history and stakeholders.

PERFORMANCE

This section provides information about the Commission's work and performance during 2016–17. It includes an outline of the Commission's performance framework; the annual performance statements, which detail the Commission's performance against intended results and performance criteria set out in its portfolio budget statements and corporate plan; and a detailed discussion of the Commission's operational performance.

MANAGEMENT AND ACCOUNTABILITY

This section reports on the Commission's internal operations, including corporate governance, human resources management, financial management and external scrutiny. It also reports against certain legislated annual reporting requirements.

APPENDICES AND REFERENCES

Seven appendices provide detailed information to complement the main report. Appendices A to D provide details of the Tribunal and its activities; Appendix E comprises the 2016–17 financial statements; Appendix F provides information on the Commission's subscription services; and Appendix G shows where each annual reporting requirement is addressed in this annual report.

At the back of the report are tools to assist you to use the report—including a glossary, a list of acronyms and abbreviations, and an index—and contact details for the Commission.

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OVERVIEW

PRESIDENT'S INTRODUCTION

GENERAL MANAGER'S OVERVIEW



PRESIDENT'S INTRODUCTION



I am pleased to introduce the Fair Work Commission's annual report for 2016–17.

It was another productive year for the Commission, in terms of our core business—dealing with applications—and our major projects, such as the 4 yearly review of modern awards. Community engagement remained a focus during the year.

ACCESS TO JUSTICE

Future Directions—a change program designed to improve the Commission's efficiency, transparency and provision of access to justice—commenced in 2012 and was completed in 2017. We can look back upon the program's achievements with a sense of pride and accomplishment.

While many of the initiatives arising from *Future Directions* were designed as one-off improvements, others provided the foundations for ongoing projects. In 2016–17, a great deal of work was done to develop the two free legal services established under *Future Directions*: the workplace advice clinics and the Pro Bono Program services.

In some areas of the Commission's responsibilities—for example, unfair dismissals—many parties are self-represented individuals with limited knowledge of the legislative framework and the Commission's rules and procedures. By providing these individuals with targeted assistance, we can improve access to, and experience of, the Commission's services.

Workplace advice clinics assist low-income unrepresented individuals who have lodged applications with the Commission or are seeking advice about their workplace rights. Clinics have been established in partnership with community legal services in Melbourne, Brisbane and Sydney, and we are looking to expand the network across Australia.

The Pro Bono Program invites eligible parties in unfair dismissal jurisdictional objection hearings to obtain free legal advice from participating law firms. The program, which currently operates in regional and metropolitan Victoria, was judged successful by participants and external evaluators in 2016–17. We are now considering extending the program to a wider range of matters and locations.

I take this opportunity to thank our partners in these projects—without their support and time, we could not deliver this most important assistance to the community.

4 YEARLY REVIEW

Modern awards were introduced in 2010 to provide a minimum safety net of terms and conditions for employees. The Commission is required to review all modern awards every four years. We began the first 4 yearly review in 2014 and expect to complete it by the middle of 2018.

The 4 yearly review is a large and significant body of work for both the Commission and the parties involved. In 2016–17, the Commission issued 38 decisions and 55 statements and posted 4,435 documents on our website in relation to the review.

The use of plain language can improve the effectiveness and usability of awards. During 2016–17, we prepared plain language drafts of award-specific clauses for several awards, selected because of the high levels of award reliance in the industries or occupations they cover, particularly among small businesses. The Commission will also apply plain language drafting principles to new provisions developed as part of the review and to a number of standard clauses found in all awards.

Applications to vary penalty rates in a range of hospitality and retail awards were among some of the specific issues considered by the review in 2016–17. A Full Bench handed down decisions concerning penalty rates in February and June 2017. The Commission also continued to hear applications to vary the entitlements of casual and part time employees. All materials related to the proceedings were published on the Commission's website to ensure access for all interested parties.

ENGAGEMENT

Members and senior staff represent the Commission and engage with the community, business, unions and employer associations through a range of events. In 2016–17, a particular highlight was the re-enactment of the 1907 Harvester case—a case that helped to establish Australia's minimum wage system—as part of Law Week Victoria.

In June 2017, the Commission hosted a negotiation masterclass in Melbourne. This masterclass, co-facilitated by leading mediation specialists from the Harvard Negotiation Institute and Harvard Law School, saw leaders from unions, employer associations and industry receive advanced training in interest-based approaches to negotiation and bargaining.

LOOKING AHEAD

In 2017–18, we will launch a pilot program to test the potential of listing certain matters outside normal business hours, as part of our efforts to improve access to justice. Between 1 July and 31 December 2017, the Commission will offer parties to unresolved unfair dismissal matters, in Melbourne, the opportunity to have their matters listed for consideration by the Commission on Thursday evenings or Saturdays. We will evaluate the pilot at its conclusion, taking into account feedback from participants and data on the Commission's performance against established timeliness benchmarks.

THANK YOU

Our many achievements over the past year were the result of the hard work and commitment of all Members and Commission staff. I thank them for their outstanding work.

Several longstanding Members of the Commission departed in 2016–17. I would like to acknowledge and thank them for their service.

I also wish to thank the Commission's stakeholders: workers, employers, registered organisations, small businesses, industry bodies and representatives. Their feedback and input play a vital role in guiding the Commission in continually improving its services to the community.



Justice Iain Ross AO

GENERAL MANAGER'S OVERVIEW



The past year has seen significant organisational change, some exciting new developments and a raft of challenges for the Commission's administration.

One of the most significant changes has been the transfer of many functions relating to registered organisations (federally registered unions and employer organisations) to the newly established Registered Organisations Commission (ROC) on 1 May 2017. Whilst this was a substantial change, most especially for the staff directly affected, the transfer was effected smoothly and with minimal disruption. This was

achieved through cooperation between the agencies. I extend my sincere appreciation to the Fair Work Ombudsman and the inaugural Registered Organisations Commissioner for their collaborative approach and I look forward to ongoing cooperation across the agencies. I also acknowledge and extend my appreciation to those staff who transferred to the Fair Work Ombudsman for their dedicated service to the Commission.

I am pleased to report that, as detailed in the annual performance statements, our performance measures have been achieved. We have operated within the resources provided by government, achieving a small funded surplus of \$1.13 million. This was achieved as a result of very welcome, additional ongoing funding to support four Commissioners provided to the Commission at the Mid-year Economic and Fiscal Outlook in December 2016.

We have sought to keep users of the Tribunal at the heart of our efforts to continuously improve the services we provide to the community. We have begun to try different approaches to involve and hear from our stakeholders, and are garnering valuable insights and suggestions about how we can further improve.

In the year ahead, we will continue to refine our processes and focus on improving our performance. We are currently developing a new case management system, which provides us with an opportunity to reimagine how we provide services and how we interact and engage with Tribunal users.

Our achievements are only possible because of the dedication and hard work of our staff. I thank them for their commitment and service to the Commission and the Australian community.

A handwritten signature in black ink, appearing to read 'Bernadette O'Neill', written in a cursive style.

Bernadette O'Neill

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ABOUT THE COMMISSION

ROLE

STRUCTURE

HISTORY

CLIENTS AND STAKEHOLDERS



ROLE



The Commission is Australia's national workplace relations tribunal. The Commission was established by the *Fair Work Act 2009* (Fair Work Act) and is responsible for administering the provisions of the Fair Work Act.

The Commission's powers and functions include:

- resolving unfair dismissal claims
- dealing with anti-bullying claims
- dealing with general protections and unlawful termination claims
- setting the national minimum wage and minimum wages in modern awards
- making, reviewing and varying modern awards
- assisting the bargaining process for enterprise agreements
- approving, varying and terminating enterprise agreements
- making orders to stop or suspend industrial action
- dealing with disputes brought to the Commission under the dispute resolution procedures of modern awards and enterprise agreements
- determining applications for right of entry permits
- promoting cooperative and productive workplace relations and preventing disputes.

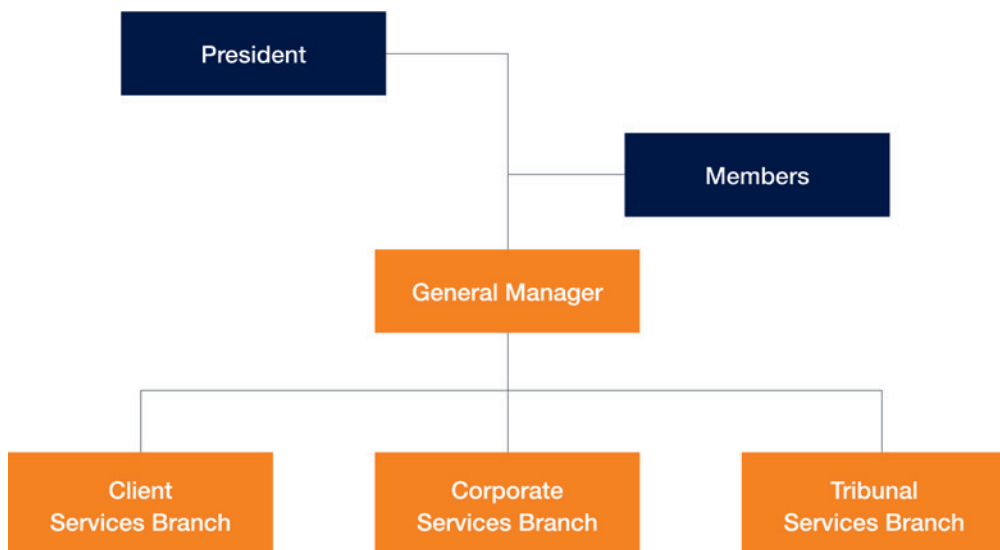
The Commission and its General Manager also have responsibilities in relation to the registration, recognition and accountability of unions and employer organisations under the Fair Work (Registered Organisations) Act 2009 (Registered Organisations Act).

The *Fair Work (Registered Organisations) Amendment Act 2016*, passed in November 2016, created the Registered Organisations Commission (ROC). Some functions that were formerly carried out by the Commission were transferred to the ROC from 1 May 2017. These functions included conducting inquiries and investigations about the finances and financial administration of federally registered unions and employer organisations. The Commission retains its functions under the Registered Organisations Act concerning the registration, amalgamation and cancellation of registered organisations and the making and alteration of their rules.

STRUCTURE

The Commission consists of the Tribunal—the President, two Vice Presidents, Deputy Presidents, Commissioners and expert panel members—supported by a General Manager and administrative staff. Figure 1 shows the structure through which the Commission performs its functions and delivers its services.

Figure 1: Organisational structure at 30 June 2017



MEMBERS

The Commission is headed by the President, the Hon. Justice Iain Ross AO, who is also a Judge of the Federal Court of Australia.

Commission Members perform quasi-judicial functions under the Fair Work Act, including conducting public hearings and private conferences for both individual and collective matters. They also perform certain functions under the Registered Organisations Act concerning federally registered unions and employer organisations.

Commission Members are independent statutory office holders appointed by the Governor-General on the recommendation of the Australian Government. They are appointed until the age of 65 on a full time basis, although they may perform duties on a part time basis with the President's approval. Members of state industrial tribunals may hold a dual appointment to the Commission. Expert panel members are appointed on a part time basis for a specified period of not more than five years.

Commission Members come from a diverse range of backgrounds, including the law, unions and employer associations, human resources and corporate management, and the public service. Expert panel members must have knowledge or experience in one or more fields specific to their panel.

Members often share their expertise and engage with the community by participating in a range of presentations, speeches and events in Australia and internationally. For a list of such activities in 2016–17, see Appendix C: Members' activities.

During 2016–17, the following Members were appointed to the Commission (in order of appointment): Deputy President Anderson, Deputy President Colman and Commissioner McKinnon.

During 2016–17, the following Members retired or resigned from the Commission: Vice President Watson, Senior Deputy President Watson, Senior Deputy President Acton, Senior Deputy President Drake, Senior Deputy President Richards, Deputy President Lawrence and Acting Commissioner Cloghan.

THE PANEL SYSTEM

The Commission allocates work predominantly through a panel system overseen by the President. The panel system seeks to ensure that matters are dealt with efficiently by Members with experience and expertise in particular areas.

On 18 October 2016, the Commission announced changes to its panels, consolidating industries under three panels. From that date, Deputy President Clancy became the head of the termination of employment panel, with Commissioner Bissett as deputy.

On 13 February 2017, the Commission announced further changes to its panels, with Vice President Catanzariti as head of the major resources/infrastructure projects panel, and Senior Deputy President Hamberger as head of the organisations panel.

All panel matters in Western Australia are allocated by Deputy President Bull.

At 30 June 2017, the Commission had eight panels:

- major resources/infrastructure projects
- government and recreational services
- manufacturing and building industry
- transport, agriculture, mining and services
- organisations
- termination of employment
- anti-bullying
- the annual wage review.

For more information on the panel system, see Appendix A: List of Members and Appendix B: Panel assignments.

ADMINISTRATIVE STAFF

The Commission's General Manager is Bernadette O'Neill. The General Manager's statutory function is to assist the President in ensuring that the Commission performs its functions and exercises its powers under the Fair Work Act. The General Manager also exercises some regulatory functions and powers concerning federally registered unions and employer organisations under the Registered Organisations Act.

The General Manager is supported by Commission staff, who are employed under the *Public Service Act 1999* (Public Service Act). Staff are organised into three branches, with the head of each branch, together with the General Manager, forming the Executive.

Client Services, headed by Louise Clarke, handles the majority of enquiries, both by telephone and at offices in each state and territory. Staff receive and process applications, prepare files, coordinate hearing and conference rooms, maintain the case management system, arrange and conduct conciliations and mediations, and publish documents including decisions and orders.

Corporate Services, headed by Ailsa Carruthers, is responsible for corporate governance and reporting, legal services, financial management and resources, internal communications, human resources and information technology.

Tribunal Services, headed by Murray Furlong, provides research, project management and administrative support to Commission Members.

Tribunal Services staff support the work of Members in chambers, undertake specialist workplace relations and economic research, and assist with managing large statutory reviews, such as those concerning modern awards and the minimum wage. In addition, they perform analysis of enterprise agreements, coordinate arbitration hearings for unfair dismissal matters, provide research for individual Members, maintain a workplace relations library and oversee national and international engagement activities. Since 1 May 2017, staff have processed right of entry permit applications and performed residual functions under the Registered Organisations Act concerning the registration, amalgamation and cancellation of registered organisations and the making and alteration of their rules.

HISTORY

Australia has had a national workplace relations tribunal for more than a century—it is one of the country's oldest institutions. Over time, the Tribunal has undergone many changes in jurisdiction, name, functions and structure. Throughout that history, the Commission and its predecessors have made many decisions that have affected the lives of working Australians and their employers. The Commission recognises the importance of capturing and preserving its history for display and research.

The Commission established the Sir Richard Kirby Archives in 2002 as a means of preserving its history. Named in honour of the longest serving President of the Commission, the archives contain a range of historical materials, including documents, photographs, and a collection of oral interviews with past Members and senior staff of the Commission. It is overseen by the National Archivist, Deputy President Hamilton, who also runs an exhibition program.



IN FOCUS

HARVESTER REVISITED



Farmers visit the Sunshine Harvester Works, Sunshine, Victoria, circa 1910.



The year 2017 marks the 110th anniversary of the Harvester Judgment, a key decision leading to the introduction of Australia's first minimum wage in the 1920s.

On 15 May 2017, the Commission presented a mock hearing of the historic Harvester case, as part of Law Week Victoria.

The event sought to acknowledge the importance of the Harvester case, and to demonstrate how principles from that historic decision continue to influence the Commission today.

Held in the historic Banco Court at the Supreme Court of Victoria, the mock hearing featured historic witnesses and representatives, in period dress, appearing before a modern Full Bench of the Commission. The evidence given was based on the original transcript of the case.

The event was accompanied by a display of photographs and historical documents, including the 1907 transcript, and streamed live over the internet. A video of the event can be viewed at the Commission's YouTube page.

The mock hearing was fully booked within days of its announcement. Approximately 150 people attended the event and more people watched online. Audience members included current and former Federal Court and Supreme Court justices, law and industrial relations practitioners, academics, and students.

The Commission was honoured to have several former Members of the Commission in attendance—including a former President, Professor the Hon. Geoffrey Giudice AO, and two former deputy presidents, Emeritus Professor the Hon. Joe Isaac AO and Emeritus Professor the Hon. Keith Hancock AO—along with some direct descendants of Mr HV McKay, the inventor and manufacturer of the Sunshine Harvester.

Image: Paul Guilfoyle, dressed as a witness in period costume, gives evidence to a Full Bench of the Fair Work Commission in the historic Banco Court for Harvester revisited.

CLIENTS AND STAKEHOLDERS

The Commission's work directly or indirectly affects most of Australia's employees and employers and, as a consequence, the Commission has a diverse group of clients and stakeholders.

In broad terms, the Commission has jurisdiction over a national system that covers:

- all private sector employers and employees in all states and territories except Western Australia (where private sector coverage is limited to constitutional corporations)
- the Commonwealth public sector
- all employers and employees in the territories and in Victoria (with limited exceptions in relation to some state public sector employees)
- some public sector and local government employment in other states.

The Commission's anti-bullying jurisdiction extends to a broader range of workers (in addition to employees) when they are at work in constitutionally-covered businesses.

IN FOCUS

WORKPLACE ADVICE CLINICS

Workplace advice clinics (WACs) are free legal advice services facilitated by the Commission. The first clinic was established in our Melbourne office in May 2016; further clinics have since been established in Sydney and Brisbane.

WACs are a joint initiative of the Commission and legal services in each state, including Springvale Monash Legal Service and Job Watch in Melbourne, Legal Aid New South Wales and Marrickville Legal Centre in Sydney, and Legal Aid Queensland in Brisbane.

The clinics operate via a booking system, and are open to low-income individuals who have made or intend to make an application before the Commission, or are seeking advice about an employment-related issue. Lawyers supplied by the legal services provide confidential advice in sessions lasting up to an hour.

In 2016–17, the Melbourne clinic assisted 271 clients and the Sydney clinic assisted 186 clients. The Brisbane clinic, which commenced in April 2017, assisted 81 clients in the remainder of the reporting period.

The self-represented individuals who receive advice from the clinics are among those most likely to face barriers to accessing legal services. Daniel Bean, a managing lawyer at Springvale Monash Legal Service, observed:

'The partnership with the Fair Work Commission has allowed us to bridge a gap with clients that otherwise would have been without necessary guidance and advice. The clinic has assisted many vulnerable clients, including newly arrived migrants, asylum seekers, low-income earners and clients with disabilities.'

Ian Scott, from Job Watch, observed that:

'Most, if not all, the people I see at the WAC are genuinely relieved to be able to obtain legal advice and assistance regarding their employment law situation. Most people have multiple legal options and very short time limits. For these people, being some of the most vulnerable and disadvantaged workers, e.g. visa workers, the WAC provides timely, efficient and effective access to justice.'

WACs were also established to promote the efficient use of resources within the Commission. When an applicant's claim falls outside the Commission's jurisdiction, WAC lawyers can quickly re-direct it to the correct forum. On this subject, Bridget Akers, the coordinating lawyer for the WAC at Legal Aid New South Wales, said:

'... WAC lawyers are able to provide holistic advice to clients about their workplace rights. This means that when clients have a claim that could be lodged at the Fair Work Commission, WAC lawyers can assist the client to draft and file that claim within time. However, WAC lawyers can also provide advice and assistance to clients whose claims are more appropriately lodged in another jurisdiction. This avoids the client being frustrated by being told that he or she is in the wrong forum and reduces the work load of the Commission in having to deal with claims that could be more appropriately dealt with in another jurisdiction.'

Lawyers at the clinics are also able to advise clients where their claims are unmeritorious or unlikely to succeed. By reducing applications with little or no prospect of success, fewer employers are required to participate in Commission proceedings as respondents.

The advice and support provided at clinics helps people who do choose to pursue applications before the Commission to confine their applications to the key issues and legal tests, and to develop reasonable expectations around the outcomes of conciliations and arbitrations.

Feedback provided by WAC clients has been overwhelmingly positive. Comments provided at the conclusion of clinic appointments include:

'I found it a relief to be able to speak to someone who could offer professional advice. It has removed a great deal of stress and given me confidence about the direction I am taking. Thank you very, very much.'

'I needed objective advice to assist me to understand and interpret my current situation and I received it.'

'I was able to explain my situation. The team was very good. The session helped me in understanding my present situation (legal and workplace rights and unfair dismissal). I believe now that I got a clear picture of where I stand and what actions to consider when there is an adverse situation at work.'

'I came to know about the general protections and work rights. Also it is a free service, which helps people like me—unemployed at certain circumstances.'

Justice Ross, the Commission President, has said:

'The Commission is very proud of the work that the legal services have performed through the workplace advice clinic. As a pilot run in Melbourne, the clinic has been extremely successful, bringing significant benefits to its clients and to the Commission. We are now seeing that same success replicated in Sydney and Brisbane, where further clinics have only recently been established.'

The Commission will review the operation of the WACs in 2017–18, and look to further expand the network of clinics in partnership with legal services across Australia.

IN FOCUS

PRO BONO PROGRAM



The right to a fair hearing is deeply ingrained in Australia's law and legal culture. A fair hearing is one where the parties are afforded procedural fairness and are given an equal opportunity to participate effectively in the hearing of their matter. In the case of the Commission, the need to provide a fair hearing is reinforced by its statutory duty under s.577(a) of the Fair Work Act to exercise its powers in a manner that is 'fair and just'.

For courts and tribunals seeking to ensure a fair hearing, self-represented parties present a particular challenge. Without representation, individuals can face a number of disadvantages in navigating the complexities of a legal system. Self-represented parties may lack knowledge of the laws that will decide their case, and so may not know what the decision-maker will take into account in order for the self-represented party to succeed. Being unfamiliar with rules and procedures, self-represented parties can be disadvantaged by needing to spend more time and energy learning and navigating procedures when compared with represented parties. At a hearing, a self-represented party may also be disadvantaged by a lack of objectivity owing to the party's closeness to his or her own case.

Image: A Commission staff member provides information on accessing the Pro Bono Program.

ESTABLISHMENT

In recognition of the need to improve self-represented parties' access to legal advice, the Commission established a pilot Pro Bono Program in 2013, to provide assistance to eligible individuals and small businesses. The pilot program was confined to providing legal advice about jurisdictional hearings in unfair dismissal matters after an employer had raised a jurisdictional objection.

The pilot was established in Victoria in partnership with 14 law firms and operated for approximately 12 months, delivering legal advice to eligible applicants and respondents. The pilot was reviewed by the RMIT University Centre for Innovative Justice (CIJ). After consulting both the law firms and clients who had participated in the pilot, the CIJ recommended that the program continue and made some recommendations for improvement.

CURRENT OPERATION

Today, the Pro Bono Program operates with the assistance of firms who participated in the pilot. A number of other law firms and the Australian Industry Group (Ai Group) also joined the program during 2016–17. The program remains focused on providing legal advice in relation to jurisdictional objections in unfair dismissal proceedings and is available to both unrepresented applicants and respondents who meet a basic means test.

To connect parties to the program, the Commission's Unfair Dismissal Conciliation Management Team provides information to eligible employee applicants and employer respondents. Law firms are rostered to contact parties who request pro bono advice. While the program only requires them to provide an hour's advice by telephone or in person, law firms will often provide further services at their discretion, including occasionally representing parties at hearings.

The Pro Bono Program has a high rate of uptake. In 2016–17, of the total number of eligible parties, 63% requested and received support through the program. Of the parties who received pro bono assistance, 87% were employees and 13% were employers.

The recipients of pro bono assistance, some of whom are highly disadvantaged, have provided very positive feedback about the program. One client wrote:

'I was given succinct and very wise help and advice, well within the limits of the solicitor's remit. She was exceedingly polite and straightforward and steered me in the right direction.'

For respondent small businesses, the program also provides vital support. Presently, most respondent clients are provided advice by Ai Group. Chris Sealie from Ai Group observed:

'Ai Group Workplace Lawyers have been an enthusiastic supporter of the Fair Work Commission Pro Bono Program. Ai Group Workplace Lawyers have participated in the training programs run by the Commission as well as the Pro Bono Program itself. Both the training received and the overall experience of being involved in the Pro Bono Program has been extremely positive for both our team of Workplace Lawyers and in particular small business clients who have participated in the program.'

IN FOCUS **CONTINUED**

For the firms, the Pro Bono Program gives junior lawyers the opportunity to gain valuable experience pursuing a matter in the Commission's jurisdiction. Michaela Moloney from K&L Gates commented:

'The Fair Work Commission Pro Bono Program gives K&L Gates the chance to provide assistance to the public and support the Commission. As a firm that works predominantly for employers, our lawyers are given a unique opportunity to consider matters from the applicant's perspective. The type of matters that come to us through the program mean that our junior lawyers can have hands on involvement in providing advice to parties who may be vulnerable and might not otherwise have access to lawyers. We are very pleased to support the program.'

Abigail Cooper of Ashurst said:

'Having participated in the program since its inception, our team has seen the benefits for both clients and lawyers of participating in the program. A number of our lawyers have had their first opportunity to appear in the Commission through the Pro Bono Program and have gained confidence and experience which is readily applicable to matters for commercial clients. We have acted for a number of applicants in resisting jurisdictional objections and in other cases have assisted applicants with obtaining an alternative resolution of their concerns.'

Dru Marsh of Lander & Rogers said:

'The program is an easy sell to our pro bono committee: it meets an important access to justice need, assists the Commission in its work and enriches the skills and experience of the enthusiastic junior lawyers.'

By equipping parties to more effectively represent themselves, the Pro Bono Program also helps the Commission to run matters more efficiently. On this subject, Deputy President Clancy, head of the termination of employment panel, commented:

'Jurisdictional hearings can require the resolution of relatively technical issues, and so it can benefit parties considerably if they are able to obtain legal guidance. The advice given to self-represented parties through the program often has a positive impact on the conduct of hearings, with parties better informed about the relevant issues and the way in which they need to address them.'

Following on from a second positive review of the program by the CIJ in September 2016, the Commission will consider how the program can be expanded to operate beyond Victoria.

IN FOCUS

SMALL BUSINESS CONSULTATION AND ENGAGEMENT



The *Future Directions* program, launched in 2012, was designed to significantly improve the Commission's delivery of services to be more user centred.

Our improvements in service delivery have been particularly focused on the needs of self-represented employees and employers who do not have legal knowledge or experience and are often unfamiliar with the Commission and its procedures.

Many of the inexperienced employers who come before the Commission are small businesses, making our engagement with them particularly important. While we have focused resources on improving the accessibility of our services to small businesses, we recognise that our processes can be further improved to minimise the compliance and administrative burden on small businesses.

In 2016–17, the Commission undertook user-design workshops and focus groups with small employers to identify further ways to improve our processes, procedures and information resources, especially in unfair dismissal matters. These initiatives are expected to provide the Commission with some practical suggestions about how to better meet the needs of small business, which will be considered in the next reporting period.

Image: Small business engagement event hosted by the Australian Hotels Association.

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PERFORMANCE

PERFORMANCE SNAPSHOT

PERFORMANCE FRAMEWORK

ANNUAL PERFORMANCE STATEMENT

OPERATIONAL PERFORMANCE



PERFORMANCE SNAPSHOT



34 days

Median time elapsed from lodging applications to finalising conciliations in unfair dismissal applications



Completed annual wage review

6 June 2017



32 days

Median time for agreement finalisation



3 days

Median time taken to list applications relating to industrial action



OPERATIONAL PERFORMANCE



33,071

Applications lodged



15,804

Hearings and conferences held



11,103

Decisions and orders published

ENGAGEMENT



4.82 million

Website visits, a 2.11 per cent increase



184,965

Phone calls made to the information line



3 minutes 29 seconds

Average call wait time

TYPES OF APPLICATIONS LODGED

14,135

Unfair dismissal

5,698

Agreement approvals

3,729

General protections involving dismissal

2,106

Dispute resolution

1,888

Other matters

1,243

Registered organisations

1,180

Agreements – other

937

General protections – other

797

Industrial action

722

Orders to stop bullying

399

Bargaining

237

Appeals

PERFORMANCE FRAMEWORK

The Commission's performance reporting framework is built around three core elements: portfolio budget statements, the corporate plan and annual performance statements.

The goals and performance measures set out in the framework in 2016–17 are shown in Table 1.

PORTFOLIO BUDGET STATEMENTS

The Commission is funded through the Australian Government Employment portfolio budget statements, which also set out the Commission's planned outcomes and program. Outcomes are the intended results, impacts or consequences of actions by government entities, and programs are the primary means by which government entities achieve their intended outcomes.

CORPORATE PLAN

The corporate plan is the Commission's primary planning document, and sets out the Commission's purpose, key strategies and activities. The four-year plan is updated annually; the **Corporate Plan 2016–17** covers the period 2016–17 to 2019–20.

ANNUAL PERFORMANCE STATEMENTS

Our annual performance statements are produced at the end of each financial year, and provide an assessment of how well the Commission has achieved its purpose and delivered its program.

The annual performance statements in this report cover the Commission's activities from 1 July 2016 to 30 June 2017, except for the activities of the Regulatory Compliance Branch which are reported from 1 July 2016 to 30 April 2017. From 1 May 2017, some functions that were previously carried out by the Regulatory Compliance Branch transferred to the newly established ROC.

Table 1: Performance framework

Portfolio budget statements	Outcome 1	
	Simple, fair and flexible workplace relations for employees and employers through the exercise of powers to set and vary minimum wages and modern awards, facilitate collective bargaining, approve agreements and deal with disputes.	
	Program 1.1	
	Dispute resolution, minimum wage setting, orders and approval of agreements. The Fair Work Commission exercises powers under the <i>Fair Work Act 2009</i> in accordance with the objects of the Act and in a manner that is fair and just; is quick, informal and avoids unnecessary technicalities.	
Corporate plan	Purpose	
	The Fair Work Commission is Australia's national workplace relations tribunal. The overarching purpose of the Fair Work Commission is to exercise powers and functions under legislation. The Commission is an independent body:	
	<ul style="list-style-type: none"> ○ providing a safety net of minimum conditions, including minimum wages, in awards ○ facilitating good faith bargaining and the making of enterprise agreements ○ granting remedies for unfair dismissal ○ regulating the taking of industrial action ○ resolving a range of collective and individual workplace disputes through conciliation, mediation and in some cases arbitration ○ functioning in connection with workplace determinations, equal remuneration, transfer of business, general workplace protections, right of entry and stand down. 	
Annual performance statements	Objective 1	Objective 2
	The Fair Work Commission is accountable and transparent	The General Manager's powers and functions are exercised in accordance with the <i>Fair Work (Registered Organisations) Act 2009</i>
	Purpose	
	The Fair Work Commission is Australia's national workplace relations tribunal. The purpose of the Commission is to exercise powers and functions under legislation, in a manner that:	
<ul style="list-style-type: none"> ○ is fair and just ○ is quick, informal and avoids unnecessary technicalities ○ is open and transparent ○ promotes harmonious and cooperative workplace relations. 		
Annual performance statements	Activity One	Activity Two
	Powers and functions are exercised in accordance with the <i>Fair Work Act 2009</i>	Powers and functions are exercised in accordance with the <i>Fair Work (Registered Organisations) Act 2009</i>
	Activity Three Organisational capability is enhanced	
Report against performance criteria for programs and activities and analysis of the factors that contributed to achieving the Commission's intended results.		

ANNUAL PERFORMANCE STATEMENT

I, Bernadette O’Neill, as the accountable authority of the Fair Work Commission, present the 2016–17 annual performance statements of the Fair Work Commission, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, these annual performance statements are based on properly maintained records, accurately present the performance of the entity in the reporting period, and comply with subsection 39(2) of the PGPA Act.



21 September 2017

Bernadette O’Neill
General Manager

PURPOSE

As Australia’s national workplace relations tribunal, the Commission’s primary purpose is to exercise its functions and powers in accordance with the Fair Work Act. The Commission must do so in a manner that:

- is fair and just
- is quick, informal and avoids unnecessary technicalities
- is open and transparent
- promotes harmonious and cooperative workplace relations.

ACTIVITY ONE: POWERS AND FUNCTIONS ARE EXERCISED IN ACCORDANCE WITH THE *FAIR WORK ACT 2009*

Intended results:

- The community understands the role of the Commission and recognises it as an independent and expert workplace relations tribunal.
- The Commission is accessible to all Australians, recognising the community’s diverse needs and expectations.
- The Commission is efficient, accountable and transparent.

RESULTS AGAINST PERFORMANCE CRITERIA

Table 2 shows the results against the performance criteria and targets set out in the Commission's 2016–17 portfolio budget statements (page 108) and the 2016–17 corporate plan (pages 4 to 6).

Table 2: Annual performance statements—results for Activity One

Performance criteria	Target	Result
Survey all parties to individual matters following a staff conference or conciliation	Survey 80% of parties	Achieved.
At least 80% of survey respondents in individual matters, following a staff conference or conciliation, are satisfied that their conference conciliator was even-handed	At least 80% of survey respondents satisfied	84% of survey respondents satisfied.
Report on the activities that involved consultation with users about improving service delivery	Report on activities	Report completed.
At least 80% of survey respondents in individual matters, following a staff conference or conciliation, found the information easy to understand	At least 80% of survey respondents agree	80% of survey respondents agree.
At least 80% of survey respondents in individual matters, following a staff conference or conciliation, are satisfied with the relevance of information provided by the Commission	At least 80% of survey respondents satisfied	84% of survey respondents satisfied.
At least 75% of survey respondents in individual matters, following a staff conference or conciliation, are satisfied with information provided by the Commission about its processes	At least 75% of survey respondents satisfied	79% of survey respondents satisfied.
Establish a report on use of technology that improves access to the Commission's services, including hearings and conferences	Establish a report	Report established.
Improve or maintain the time elapsed from lodging applications to finalising conciliations in unfair dismissal applications	34 days	34 days.
Annual wage review to be completed to enable operative date of 1 July	Publication by 30 June	Completed on 6 June 2017.
Improve or maintain the agreement approval time	32 days	32 days.

ANALYSIS OF PERFORMANCE AGAINST INTENDED RESULTS

In 2016–17, the Commission surveyed 80 per cent of parties to individual matters following a staff conference or conciliation. Survey responses consistently met or exceeded targets, with 84 per cent of respondents being satisfied that their conference conciliator was even-handed, 80 per cent finding information easy to understand and 84 per cent being satisfied with the relevance of the information provided by the Commission. Some 79 per cent of survey respondents were satisfied with the Commission's information about its processes.

The Commission has improved the way in which it reports on its key technology services, including the new telephony system, video conferencing services and the website that was launched on 8 July 2016. Improved internal reporting will assist the Commission in continuing to enhance access to its services through technology.

In 2016–17, the Commission met the target of a median of 34 days between lodgment and conciliation of unfair dismissal applications. In 2016–17, 14,135 unfair dismissal applications were lodged and Commission staff conducted 13,172 conciliation conferences, 310 more conferences than in 2015–16. The 34-day target was maintained in 2016–17, despite the modest increase in the number of conciliation conferences.

The Commission completed the annual wage review on 6 June 2017, more than three weeks before the target date of 30 June 2017.

In 2016–17, the Commission met the target of a median of 32 days for enterprise agreement approval times. In 2016–17, the Commission finalised 5,606 applications for approval of an enterprise agreement, an increase of 157 applications from the previous year.

The increase in approval times in 2016–17, compared to 2015–16, is partly attributable to the rigorous process undertaken by the agreement triage team for determining whether statutory requirements are met. One impact is that a significantly higher number of enterprise agreements are being approved with written undertakings than in previous reporting periods. It takes the Commission longer, on average, to approve agreements with written undertakings, which often involve extensive communication with the applicant. In addition, internal resourcing pressures for staff who assist the Commission in assessing enterprise agreement approval applications contributed to delays in the approval process, but these issues have now been addressed.

The delay in the passage of the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Bill 2017 has also adversely impacted the Commission's timeliness in approving agreements. In anticipation of the Commission being given retrospective capacity to remedy some non-compliant applications, the Commission has given applicants the option of deferring its consideration of an application where it identifies minor or technical errors in the application. This has meant that, in some cases, the Commission has deferred consideration of applications since early May 2017.

In the year ahead, the Commission will focus on improving our timeliness performance in agreement approval applications.

ACTIVITY TWO: POWERS AND FUNCTIONS ARE EXERCISED IN ACCORDANCE WITH THE *FAIR WORK (REGISTERED ORGANISATIONS) ACT 2009*

Intended result:

- The Commission is an effective and proactive regulator of registered organisations.

RESULTS AGAINST PERFORMANCE CRITERIA

Table 3 shows the results against the performance criteria and targets set out in the Commission's 2016–17 portfolio budget statements (page 108) and the 2016–17 corporate plan (page 7). These measures are for the first 10 months of the reporting period: 1 June 2016 to 30 April 2017. Detailed information and analysis on the results achieved is reported in the Fair Work Ombudsman 2016–17 annual report.

Table 3: Annual performance statements—results for Activity Two

Performance criteria	Target	Result
95% of financial reports required to be lodged under the <i>Fair Work (Registered Organisations) Act 2009</i> are assessed for compliance within 40 days	95% assessed within 40 days	100% assessed within 40 days.
Registered organisations demonstrate high levels of compliance with legislative obligations	High levels of compliance	98% of financial reports lodged within statutory timeframes. 99% of annual returns lodged within statutory timeframes.
The Commission meets performance targets set out in the Regulator Performance Framework	Regulator Performance Framework targets met	Performance targets met.

ANALYSIS OF PERFORMANCE AGAINST INTENDED RESULTS

The most significant change to the Commission's operating environment in 2016–17 was the transfer of functions and staff from the Regulatory Compliance Branch to the Fair Work Ombudsman as a result of the establishment of the ROC on 1 May 2017. Many functions that were previously exercised by the Commission's General Manager under the Registered Organisations Act, including conducting investigations into the finances and financial administration of registered organisations and the commencement of associated proceedings in the Federal Court of Australia, are now exercised by the ROC.

The functions that were transferred to the ROC are reported in the Fair Work Ombudsman 2016–17 annual report.

The Commission exceeded its target for assessment of financial reports in 2016–17. The Commission's effectiveness in assisting registered organisations to achieve high levels of voluntary compliance was demonstrated by the high number of financial reports and annual returns lodged by registered organisations within statutory timeframes.

ACTIVITY THREE: ORGANISATIONAL CAPABILITY IS ENHANCED

Intended result:

- The Commission is a highly skilled and agile organisation in which its people, processes, systems and technology are aligned to deliver high-quality, efficient and effective services to the community.

RESULTS AGAINST PERFORMANCE CRITERIA

Table 4 shows the results against the performance criteria and targets set out in the Commission's 2016–17 corporate plan (page 8).

Table 4: Annual performance statements—results for Activity Three

Performance criteria	Target	Result
90% of performance and development plans specify individual and/or organisational professional development goals	90%	94%
Majority of registry staff have completed the required learning management system modules	Majority of registry staff	97% completed the communication skills module. 88% completed the anti-bullying jurisdiction module.
At least 30% of staff are provided with an opportunity to experience work outside their usual role, participate in a cross organisational project or be involved in a service improvement project	At least 30% of staff provided with an opportunity	46% of staff were provided with an opportunity.

ANALYSIS OF PERFORMANCE AGAINST INTENDED RESULTS

Activity Three underpins the Commission's effective performance of its functions and powers under legislation, through the enhancement and ongoing development of the Commission's people, culture, systems and processes.

As part of our employee performance management framework, employees develop an annual performance and development plan in consultation with their managers.

In 2016–17, the Commission developed new communications and technical learning modules to ensure that Registry staff continue to provide high-quality frontline services to members of the public, including parties to matters and their representatives. The completion rates for both training modules were high.

In 2016–17, nearly 50 per cent of the Commission's staff had the opportunity to expand their skills and take on new challenges by working in, or with, other parts of the Commission—opportunities which encourage innovation, collaboration and service excellence.

OPERATIONAL PERFORMANCE

In fulfilling the requirements of the Fair Work Act, the Commission provides assistance to a range of parties, including employees, businesses and representatives from associations, law firms and federally registered unions and employer organisations. The Commission offers a wide range of advice and assistance over the telephone, in person and through correspondence.

Tribunal processes commence once a formal application has been filed with the Commission.

DELIVERY OF COMMISSION SERVICES

APPLICATIONS

In 2016–17, a total of 33,071 applications were lodged with the Commission (compared to a total of 34,215 in 2015–16).

The Commission's case load in 2016–17 was similar to previous years, decreasing by 3 per cent from 2015–16. Unfair dismissal applications continued to be the most common application, making up approximately 43 per cent of total applications filed. In line with the overall trend, the number of unfair dismissal applications decreased by 4 per cent from the previous year. The number of industrial action applications (including protected action ballot orders) showed a significant decrease of 37 per cent compared with the previous year, although the trend over the longer term (while still downward) is less marked.

Lodgments of other application types were consistent with numbers in previous years, with increases in the number of enterprise agreements approved and in general protections (involving dismissal) applications.

Table 5 shows the volume of work according to the type of matter lodged from 2013–14 to 2016–17. Details of numbers of applications lodged in 2016–17 are provided in Appendix D, Table D8.

Table 5: Volume of work, by matter type

Matter type	2016–17	2015–16	2014–15	2013–14
Unfair dismissal	14,135	14,694	14,624	14,796
Agreement approvals	5,698	5,529	5,922	6,754
Agreements—other ¹	1,180	1,335	1,469	3,448
General protections involving dismissal ²	3,729	3,270	3,382	2,879
General protections—other ³	937	940	993	909
Orders to stop bullying	722	734	694	343
Dispute resolution ⁴	2,106	2,194	2,331	2,657
Industrial action ⁵	797	1,272	957	989
Bargaining ⁶	399	408	479	423
Appeals	237	283	336	214
Registered organisations	1,243	1,472	1,120	1,381
Other matters	1,888	2,084	1,845	2,273
Total	33,071	34,215	34,152	37,066

1 Applications to vary and terminate enterprise agreements and transitional individual agreements.

2 Applications made under s.365 of the *Fair Work Act 2009* (FWA).

3 Applications made under ss.372 and 773 of the FWA.

4 Applications made under ss.120, 526, 533, 699 and 739 of the FWA.

5 Applications made under ss.266, 418, 419, 423, 424, 425, 426, 437, 447, 448, 459 and 472 of the FWA.

6 Applications made under ss.229, 236, 238, 240, 242 and 248 of the FWA.

HEARINGS AND CONFERENCES

In 2016–17, Commission Members held 15,804 hearings and conferences around Australia, a reduction of 5 per cent from the previous year.

Hearings and conferences are held in each capital city and regional locations. They are held in person, by telephone or by video conference. Not all matters involve a hearing or conference—some are decided by a Member on the papers in chambers.

Commission Members hold hearings and conferences by telephone or video conference wherever suitable, to reduce parties' travel time and costs and to ensure efficient use of Commission resources. In 2016–17, over 27 per cent (4,297) of all hearings and conferences conducted by Members were held by telephone or video conference. Some 35 per cent (5,543) of matters, predominantly applications for approval of enterprise agreements, were decided by a Member on the papers, without the need for a hearing or conference.

In addition, experienced staff conducted 13,172 conciliation conferences during 2016–17. Conciliators hold conferences in relation to applications concerning unfair dismissal, general protections involving dismissal and anti-bullying. Most conciliations are conducted by telephone. See Appendix D, Table D6 for detailed information on hearings and conferences.

INFORMATION AND ASSISTANCE

The Commission provides assistance in person at our state and territory offices, through our telephone helpline and by email. The Commission caters for the different needs of parties by making arrangements for interpreters, hearing loops and other special needs, as requested.

Decisions and orders are published on the Commission's website. Parties have access, free of charge through our website, to an audio file of hearings held in public. Additionally, the Commission live streams major decisions, such as the annual wage review, on its website.

WEBSITE

The Commission launched a new website on 8 July 2016, following extensive collaboration with, and feedback from, regular practitioners and external parties. The website has a number of links to assist the public, businesses and practitioners to locate information and resources quickly and easily.

We have improved the search functionality of our new website to make it easier to find documents, decisions, orders and agreements. In 2016–17, significant improvements to resources on the website included:

- benchbooks for the most common types of application
- guides, fact sheets and tools such as the agreements date calculator and eligibility quizzes
- videos, including mock hearings and anti-bullying videos.

In 2016–17, the website had 4.82 million visitors, 2 per cent more than in 2015–16.

We regularly review and update our benchbooks, as a valuable resource to parties and the community more broadly. The **Unfair Dismissal Benchbook** was viewed 44,376 times; the **General Protections Benchbook**, 29,734 times; the **Enterprise Agreement Benchbook**, 15,757 times; the **Anti-Bullying Benchbook**, 15,263 times; and the new **Industrial Action Benchbook** released in March 2017, 732 times.

Our website provides several online quizzes to help potential applicants understand whether they are eligible to apply to the Commission for a remedy. In 2016–17, the unfair dismissal eligibility quiz was accessed 84,320 times; the anti-bullying eligibility quiz, 41,698 times; and the general protections eligibility quiz, 30,228 times.

TELEPHONE ENQUIRIES

The Commission provides a national helpline service between 9 am and 5 pm (local time). The helpline is often the first point of contact for people with questions about the role and functions of the Commission and for people who are considering making an application.

The number of calls received on the helpline decreased by 9 per cent, from 203,796 in 2015–16 to 184,965 in 2016–17. An upgraded telephone system, installed in March 2017, provided a more reliable system with improved reporting capabilities and quality assurance. Due to the changeover a slight margin of statistical error in the 2016–17 reporting period is likely.

The decline in helpline calls in 2016–17 can be attributed, at least in part, to improved redirection of calls through interactive voice responses, which allowed 40 per cent of callers to be directed to another agency directly. Improvements in the accessibility of information on the Commission's website may also have contributed to the decline in calls.

In 2016–17, the average wait time for a call to the Commission was 3 minutes and 29 seconds, consistent with the time in 2015–16.

FEEDBACK SURVEYS

At the conclusion of a staff conciliation conference in unfair dismissal and general protections (involving dismissal) claims, all parties and their representatives are invited to participate in an online survey. The survey asks participants to rate their experience of service from staff both before and during conciliation.

In 2016–17, the Commission set and published performance targets in relation to satisfaction with processes and information, and whether the conciliator was even-handed. The Commission met or exceeded each of its satisfaction targets—see page 37 for details.

TIMELINESS BENCHMARKS

Our portfolio budget statements set out performance standards for timeliness of staff conciliation conferences in unfair dismissal applications, approval of enterprise agreements, and completion of the annual wage review. Further information can be found in the annual performance statements.

In addition, since 2012 the Commission has introduced performance benchmarks concerning delivery of reserved decisions by a single Member dealing with applications for the approval of enterprise agreements, the hearing of appeals, and handing down reserved decisions in appeal matters.

The benchmarks are intended to be challenging, and to that extent they are aspirational. But the setting of performance benchmarks and the public reporting of the Tribunal's performance against those benchmarks are important accountability measures.

The following graphics compare the Commission's performance against benchmarks in 2016–17 with its performance before the introduction of the benchmarks. While in most instances the Tribunal's performance has improved since the benchmarks were introduced in 2012, there remains room for further improvement. Improved timeliness performance will be a significant focus in the year ahead.

Figure 2: Timeliness benchmarks—reserved decisions

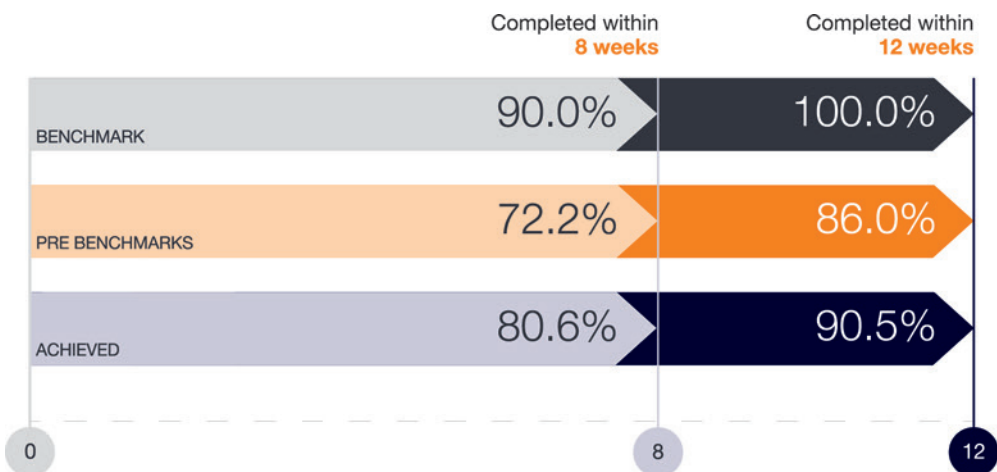


Figure 3: Timeliness benchmarks—agreements

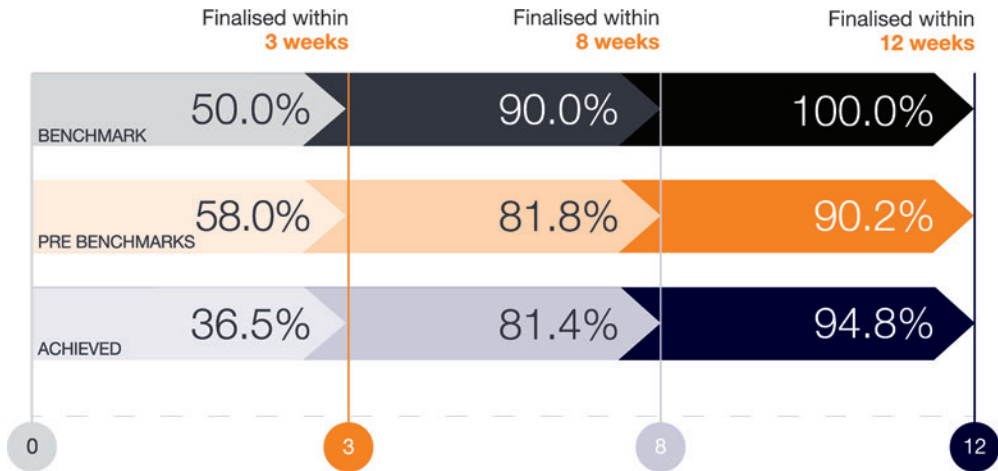


Figure 4: Timeliness benchmarks—listing of appeals

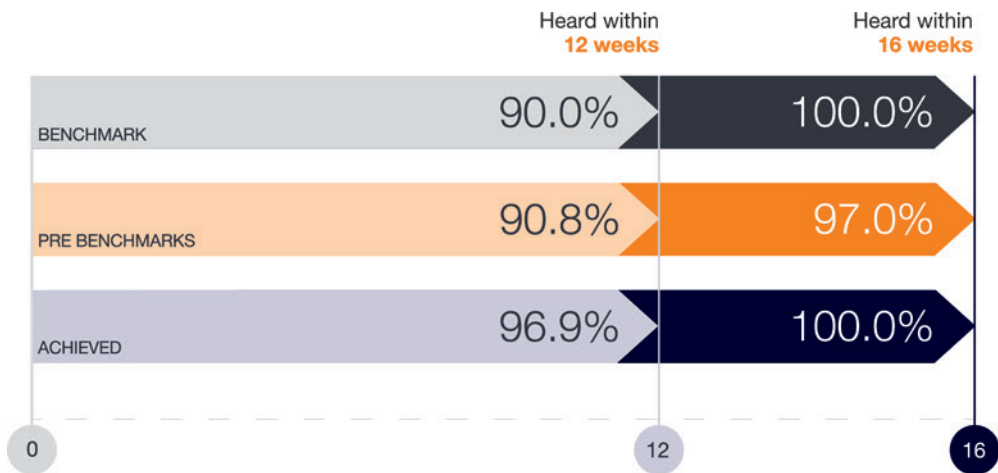
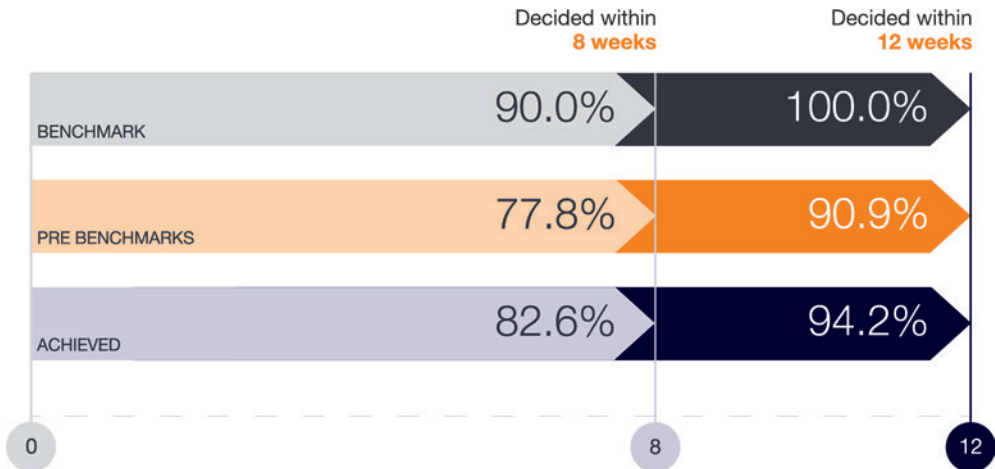


Figure 5: Timeliness benchmarks—appeals reserved decisions



WAGES AND CONDITIONS

ANNUAL WAGE REVIEW

Reviewing and setting minimum wages has been a key function of Australia's national workplace relations tribunal since it was first established as a court in the early 1900s. The year 2017 marks the 110th anniversary of the historic Harvester Judgment, a key decision leading to the introduction of Australia's first Commonwealth minimum wage in the 1920s. See page 21 for information on the Harvester revisited event held during 2017.

The Fair Work Act requires the Commission to review the national minimum wage for employees not covered by awards or agreements and modern award minimum wages, each year.

The Annual Wage Review 2016–17 decision directly affects more than 2.3 million employees in Australia who rely on minimum rates of pay (representing around 22.7 per cent of all employees).

PANEL

Each year, a seven-member expert panel is constituted to conduct the wage review.

The panel comprises:

- the President of the Commission
- three other full time Members of the Commission
- three part time members with knowledge of, or experience in, workplace relations, economics, social policy, business, industry or commerce.

The panel must review minimum wages in modern awards and transitional instruments, as well as the national minimum wage order from the previous annual wage review. In accordance with objectives set out in the Fair Work Act, the panel takes into account specific economic, social and collective bargaining considerations in making its decision.

DECISION

On 6 June 2017, the panel issued its decision to:

- award an increase to the national minimum wage of 3.3 per cent to \$694.90 per week, or \$18.29 per hour based on a 38-hour week
- increase all modern award minimum wages and most transitional instrument wage by 3.3 per cent
- set a number of special national minimum wages for award and agreement-free juniors, trainees and apprentices, and for employees with disability
- maintain the casual loading at 25 per cent for award/agreement-free employees and in modern awards except the Business Equipment Award 2010 (in which the loading was increased to 22 per cent, consistent with the phasing approach outlined by the panel in its 2015–16 decision).

The announcement of the 2016–17 decision was live streamed on the Commission's website, with 1,591 registered views.

The panel's determinations came into operation on 1 July 2017 and took effect from the first full pay period on or after that date.

In its 2016–17 decision, the panel stated:

'The prevailing economic circumstances provide an opportunity to improve the relative living standards of the low paid and to enable them to better meet their needs. Over the last five years, the real value of the NMW [national minimum wage] and modern award rates has grown at 4.3% which is less than half the rate of growth of labour productivity.'

TIMELINESS

The 2016–17 Annual Wage Review decision was issued on 6 June, well before the target date of 1 July in the portfolio budget statements.

THE YEAR AHEAD

In its 2016–17 decision, the review panel noted its intention to consider the research program for the 2017–18 review as early as practicable. The panel observed that the Commission's capacity to undertake additional commissioned or other research remains limited, and encouraged parties to take those constraints into account in their proposals.

The panel also noted that one project from the medium-term research program—the characteristics of the underemployed and unemployed—has yet to be undertaken and may be further scoped in 2017–18.

MODERN AWARDS

Modern awards, together with the National Employment Standards (NES), provide a minimum safety net of terms and conditions for employees. There are 122 industry and occupational modern awards operating across Australia.

In addition, at 30 June 2017, there were 33 modern awards covering specific enterprises or state public sector bodies that are part of the national workplace relations system.

4 YEARLY REVIEW

The Fair Work Act requires the Commission to review all modern awards once every four years. The first 4 yearly review began in February 2014 and is expected to be completed by the middle of 2018.

The review's initial stage considered jurisdictional issues. Having dealt with those matters, the Commission is reviewing individual awards (in four groups) and 16 common issues that apply across multiple, if not all, awards.

Throughout the review, the Commission has welcomed and encouraged input from those with an interest in how award provisions apply in the workplace.

The review is a significant and complex body of work. During 2016–17, the Commission:

- held 249 hearings, conferences or mentions
- issued 36 decisions and 55 statements
- posted 4,435 documents to its website
- sent 468 emails to subscribers.

The Commission's email subscription service providing updates to individual awards, *My awards—all matters*, had 4,423 registered subscribers at 30 June 2017.

EXPOSURE DRAFTS

As part of the 4 yearly review, the Commission develops and publishes exposure drafts for revised versions of each modern award. Exposure drafts are updated and republished as issues are determined.

Exposure drafts for all awards of general application have been produced and published for comment. Having previously divided awards into four groups, in 2016–17 the Commission published exposure drafts for 39 awards allocated to group 4 and continued to refine the exposure drafts for the awards in groups 1, 2 and 3. The review of the majority of awards in groups 1 and 2 is substantially complete.

In 2016–17, Full Benches of the Commission made decisions on a range of technical and drafting issues, which will affect all four groups of awards. Determinations dealing with claims for substantive changes to modern award entitlements during 2016–17 covered issues such as redundancy entitlements in the Black Coal Mining Industry Award 2010, rates for shiftworkers in the Concrete Products Award 2010, and the engagement of learner shearers under the Pastoral Award 2010.

SIGNIFICANT DECISIONS

Penalty rates

AM2014/305–[2017] FWCFB 1001–23 February 2017

AM2014/305–[2017] FWCFB 3001–5 June 2017–*Transitional arrangements*

AM2014/305–[2017] FWCFB 3334–21 June 2017–*Transitional arrangements*

A specially constituted Full Bench dealt with applications to vary certain penalty rates in six hospitality and retail awards as part of the 4 yearly review of modern awards. The awards were the Hospitality Industry (General) Award 2010, Registered and Licensed Clubs Award 2010, Restaurant Industry Award 2010, Fast Food Industry Award 2010, General Retail Industry Award 2010 and Pharmacy Industry Award 2010.

The Full Bench heard evidence and submissions over 39 days of hearings in 2015 and 2016. Evidence was given by 143 lay and expert witnesses, of whom 128 were required for cross-examination. More than 5,900 submissions were received from the principal parties; state and territory governments; church-based organisations; political entities; and individual employees and employers. Evidence from the final witness was heard on 28 September 2016, and the final written submission was received on 4 February 2017.

In a 551-page decision issued on 23 February 2017, the Full Bench noted that historically, industrial tribunals have expressed the rationale for penalty rates in terms of both the need to compensate employees for working outside ‘normal hours’ (the compensatory element) and the need to deter employees from scheduling work outside ‘normal hours’ (the deterrence element).

Having regard to more recent authority, the terms of the modern awards objective, and the scheme of the Fair Work Act, the Full Bench concluded that deterrence is no longer a relevant consideration in the setting of weekend and public holiday penalty rates and reduced Sunday penalty rates by amounts ranging from 25 to 50 percentage points in those awards.

The Full Bench observed that the conclusions it reached in relation to the hospitality and retail awards are largely based on the particular circumstances relating to these awards, which have characteristics distinguishing them from other industries.

The Full Bench considered that there are likely to be some positive employment effects from a decrease to both Sunday and public holiday penalty rates, although those effects are hard to quantify.

The Full Bench acknowledged that the immediate reduction of Sunday penalty rates would inevitably cause some hardship to affected employees. Accordingly, it concluded that appropriate transitional arrangements are necessary to mitigate the hardship caused to employees who work on Sundays. In a subsequent decision issued on 5 June 2017, the Full Bench determined that the reduction would be phased in over a number of years to moderate its impact on affected employees.

The penalty rates decision also reduced public holiday penalty rates in the same awards, as well as the Restaurant award. The Full Bench made some minor variations to late night penalties in two of the awards under review.

The decisions are available on the Commission's website.

During 2016–17, the Commission published 1,200 documents—including submissions, transcripts and research materials—and received 17,148 website visits concerning the penalty rates decision. More than 1,000 people viewed the Full Bench handing down the decision on 23 February 2017, through a live stream on our website.

PLAIN LANGUAGE DRAFTING

Producing awards in plain language aims to remove ambiguity and make awards simpler and easier to understand; an award should be able to be read by an employer or employee without needing a history lesson or paid advocate to interpret how it is to apply in the workplace.

The Commission prepared plain language drafts of award-specific clauses in modern awards in 2016–17. Re-drafting of the Pharmacy Industry Award continued with a number of revised exposure drafts, statements and decisions narrowing the outstanding issues. Four awards were selected for a first tranche of plain language drafting: the Clerks-Private Sector Award 2010; the Hospitality Industry (General) Award 2010; the Restaurant Industry Award 2010; and the General Retail Industry Award 2010. These awards were selected due to high levels of award reliance in the industries or occupations they cover, particularly among small businesses. Exposure drafts were prepared for the clerks, hospitality and restaurant awards, an exposure draft of the Retail award will be the subject of consultation in 2017–18.

The Commission announced the selection of a second tranche of 10 awards for plain language drafting. Four of these awards (the Cleaning Services Award 2010, the Security Services Industry Award 2010, the Fast Food Industry Award 2010 and the Hair and Beauty Industry Award 2010) will proceed for consultation in 2017–18. The plain language drafting of the remaining six awards will be considered when the more substantive award-specific claims have been dealt with.

The Commission will apply plain language drafting principles to new award provisions that may arise from common issues matters and to a number of standard clauses found in all awards.

COMMON ISSUES

The Commission has identified 16 common issues across modern awards. They comprise the 13 issues listed in the 2015–16 annual report, and three issues identified in 2016–17:

- abandonment of employment (AM2016/35)
- blood donor leave (AM2016/36)
- National Training Wage (AM2016/17).

Significant events occurred in relation to two common issues in 2016–17:

- Annual leave—The Commission published a series of fact sheets explaining the operation of various annual leave terms introduced into modern awards arising from the 4 yearly review.
- Time off instead of payment for overtime—The Commission issued determinations varying 103 of the 122 modern awards to include terms which allow an employer and employee to agree to time off instead of payment for overtime.

ENTERPRISE INSTRUMENTS

Enterprise instruments are former federal or state awards that covered employees in a single enterprise or a group of related enterprises.

On 31 December 2013, all enterprise instruments terminated unless an application had been made to modernise them. Research published as part of the Annual Wage Review 2016–17 found that 1,876 enterprise instruments terminated on 31 December 2013.

The Commission has received 141 applications to modernise enterprise instruments, of which two are outstanding. The determination of both matters is dependent on other applications being dealt with concurrently as part of the 4 yearly review.

In 2016–17, the Commission made eight modern enterprise awards, including the Australian Government Industry Award 2016 which replaced 12 enterprise-specific instruments covering a number of government entities.

STATE REFERENCE PUBLIC SECTOR TRANSITIONAL AWARDS

State reference public sector transitional awards applied to public sector employees in Victoria and some local government employees in Tasmania. The Fair Work Act requires the Commission to modernise them if no application was made to terminate or modernise them by 31 December 2013.

The Commission made four state reference public sector modern awards during 2016–17, increasing the number of these instruments to eight. The modernisation of the four remaining awards is in the final stages of completion.

THE YEAR AHEAD

The first 4 yearly review of modern awards is likely to be completed by the middle of 2018. The enterprise and state reference public sector modernisation processes will also be completed during 2017–18.

SIGNIFICANT DECISIONS

Fire Fighting Industry Award 2010

(AM2014/202)–[2016] FWCFB 8025–15 November 2016



As part of the 4 yearly review of modern awards, the Metropolitan Fire and Emergency Services Board (MFB) and the Country Fire Authority applied to vary the Fire Fighting Industry Award 2010 to allow public sector fire services to provide part time employment.

Previously, only employees covered by the award who were employed by private sector employers were able to work on a part time basis. In a decision handed down on 15 November 2016 the Full Bench decided that, apart from some trainee firefighter classifications, it was appropriate to vary the award to allow employment on a part time basis. In making its decision, the Commission reviewed the prevalence of part time employment in other awards, a wide range of literature about part time employment, submissions from the parties and evidence from 25 witnesses.

The Full Bench concluded that the introduction of part time employment, with appropriate changes to rostering arrangements, is likely to increase female workforce participation in the firefighting industry, and hence gender diversity, without compromising the welfare and safety of the workforce.

ENTERPRISE AGREEMENTS

An enterprise agreement is a binding instrument made between an employer and employees—or, in the case of a greenfields agreement, between the employer and relevant unions—that governs terms and conditions of employment.

Enterprise agreements constitute a significant part of the Commission’s work—applications for agreement approvals are the second most common application after unfair dismissal applications (see Table 5). As well as assessing and approving enterprise agreements, the Commission assists parties with the process of making agreements and with resolving disputes arising from bargaining and disputes arising under enterprise agreements.

APPROVAL PROCESS

Before approving an enterprise agreement, the Commission must be satisfied that it meets criteria set out in the Fair Work Act, including the ‘better off overall test’ (BOOT). This test requires that each employee covered by the agreement will be better off overall than under the relevant modern award.

The Commission must also be satisfied that required pre-approval steps have been taken, that the group of employees covered by the agreement was fairly chosen, and that the agreement:

- has been genuinely agreed to by the relevant employees
- does not contain terms which exclude or have the effect of excluding the NES or a provision of the NES
- does not include any unlawful terms or designated outworker terms
- specifies a date as its nominal expiry date (not more than four years after the date of Commission approval)
- provides a dispute settlement procedure
- includes a flexibility clause and a consultation clause.

Where it has a concern that an enterprise agreement may not meet the requirements of the Fair Work Act, the Commission can approve the agreement with a written undertaking. Before accepting an undertaking, the Commission must:

- seek the views of each known bargaining representative for the agreement
- be satisfied that the effect of accepting the undertaking is not likely to cause financial detriment to any employee covered by the agreement, or result in substantial changes to the agreement.

The Commission cannot accept an undertaking unless the effect of accepting it is not likely to result in ‘substantial changes’ to the agreement. Minor changes to an agreement resulting from an undertaking are permissible.

APPLICATIONS

The number of applications made in 2016–17 for approval of an enterprise agreement was higher than in the previous year.

In 2016–17, a total of 5,698 applications to approve enterprise agreements were made to the Commission. Of those, 4,858 were approved, 39 were dismissed and 709 were withdrawn, as shown in Table 6.

Table 6: Enterprise agreements—lodgments and outcomes

Type of application	Lodged				Approved			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
s.185—Single-enterprise	5,474	5,238	5,449	5,945	4,663	4,523	5,027	5,602
s.185—Greenfields	177	258	407	749	162	252	399	745
s.185—Multi-enterprise	47	33	66	60	33	26	55	56
Total	5,698	5,529	5,922	6,754	4,858	4,801	5,481	6,403

Note: Results for a financial year are not confined to applications lodged in that financial year.

	Dismissed				Application withdrawn				Total finalised			
	2016-17	2015-16	2014-15	2013-14	2016-17	2015-16	2014-15	2013-14	2016-17	2015-16	2014-15	2013-14
	39	48	114	99	689	582	382	269	5,391	5,153	5,523	5,970
	0	1	2	3	11	9	17	20	173	262	418	768
	0	4	1	1	9	4	8	5	42	34	64	62
	39	53	117	103	709	595	407	294	5,606	5,449	6,005	6,800

SIGNIFICANT DECISIONS

Better off overall test: A key consideration for the Commission when deciding whether it can approve an enterprise agreement is whether the agreement passes the ‘better off overall test’, commonly called the BOOT. The requirement that an agreement must pass the BOOT is set out at s.186(2)(d) of the *Fair Work Act 2009* (the Act). Section 193(1) of the Act provides that an enterprise agreement that is not a greenfields agreement passes the BOOT if the Commission is satisfied, at test time, that each award covered employee, and each prospective award covered employee would be better off if the agreement applied to the employee than if the relevant modern award applied to the employee.

Shop, Distributive and Allied Employees Association v Beechworth Bakery Employee Co Pty Ltd t/a Beechworth Bakery

(C2016/7653)–[2017] FWCFB 1664–6 April 2017

The Full Bench considered whether a reconciliation undertaking could satisfy concerns about whether the agreement passed the BOOT. The reconciliation undertaking stated that an employee covered by the agreement could ask their employer to compare the amount paid to the amount they would have received under the relevant award over the same period, and, if the amount paid under the agreement was the lesser amount, pay them any shortfall plus an additional amount. Such a request could only be made once every four months.

The Full Bench ultimately decided that the undertaking was not capable of satisfying concerns because:

- The undertaking did not create an enforceable right to any payment; rather it operated to allow an employee to request that a comparison be made. The obligation to ‘make good’ any shortfall arises only if an employee makes a request for a review. If a request was not made, there would be no obligation to review or to pay back any shortfall.
- An undertaking that in its expression is uncertain, ambiguous, aspirational or conditional, with the result that it will not create an enforceable entitlement as a term of the agreement will not likely address the concern.
- The undertaking refers to a request being made after a four-month period. This will cause a delay in payment being made to an employee. This delay may be indefinite given that there may be a dispute about the quantum.

The agreement was remitted back to the first instance Member to consider the agreement in light of the undertaking being incapable of satisfying the BOOT concerns.

TRIAGE

In 2015–16, the Commission progressively introduced a triage process under which a team of administrative staff analyse agreements, including by completing a checklist that was developed by senior Commission Members and is published on the Commission’s website. While the team’s analysis assists with the processing of agreement approvals, Commission Members apply the relevant statutory tests and determine whether to approve an agreement.

The triage process was introduced partly to provide greater consistency and rigour in the approach to agreement approval applications. As the trends in Figure 6 demonstrate, this has led to an increased number of agreements being approved with undertakings and to applications requiring substantial changes being withdrawn.

Figure 6 shows recent trends in outcomes for enterprise agreement approval applications.

Figure 6: Enterprise agreements—results

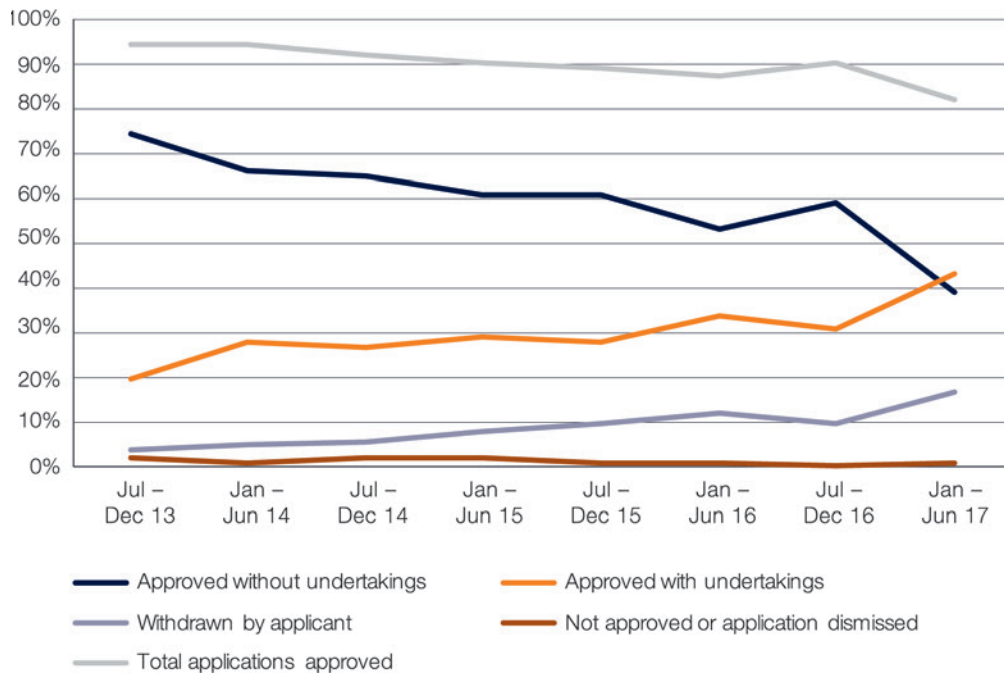


Figure 6 represents data in Appendix D, Table D5.

The proportion of agreement applications that are withdrawn has increased, rising from 4 per cent in 2013–14 to 12.4 per cent in 2016–17, with a spike of 17 per cent withdrawn in January–June 2017 (as shown in Figure 6).

Between January–June 2014 and January–June 2017 the proportion of agreements approved with undertakings increased, from 20 per cent to 43 per cent, while the proportion of agreements approved without undertakings decreased significantly, from 74 per cent to 39 per cent.

As Figure 6 illustrates, in January–June 2017, for the first time, more agreements were approved with undertakings than without.

TIMELINESS

During 2016–17, the Commission:

- received 5,698 enterprise agreement applications
- finalised 5,606 enterprise agreement applications.

The Commission's timeliness in finalising applications is affected, in part, by whether an agreement, as lodged, meets all of the requirements of the Fair Work Act. Information about approval requirements under the Fair Work Act is provided on page 53.

Where, on the face of the agreement and other information before the Commission, all of the statutory requirements are not met, the matter may be dealt with in a number of ways—the applicant may withdraw the application; the Commission may approve the agreement with undertakings; or the Commission may dismiss the application.

Table 7 shows timeliness of approvals for agreements with and without undertakings. The Commission's overall timeliness performance for agreement approval applications was lower in 2016–17 than in recent years, as seen in Table 8. In part, this reflects the increased rigour adopted through the triage process applied to all applications.

Since the introduction of the triage process, there has been a steady increase in the proportion of applications that do not appear to meet all of the statutory requirements at the time of lodgment. Analysis and identification of these applications tends to be more complex and take longer. For example, rather than dismiss such applications, Members have sought to assist the parties to address concerns through accepting written undertakings. As a rule, the Commission takes longer to approve agreements with written undertakings since it must seek the views of the employer and bargaining representatives before granting approval.

As illustrated in Figure 6 the incidence of agreements approved with undertakings has more than doubled since July–December 2013. Currently 43 per cent of agreements are approved with undertakings.

One of the legislative requirements for approving an agreement is that the employees must be provided with a notice of employee representational rights in the prescribed form. One of the most common defects in agreement approval applications is that the notice is not in the prescribed form. As the Act requires strict compliance with the form, the Commission cannot approve such applications.

A Bill has been introduced into Parliament to give the Commission some discretion to approve agreements despite minor or technical errors, such as the form of the notice. If passed, this will assist in addressing an issue that has caused significant inconvenience to bargaining parties and has impacted upon the Commission's timeliness performance.

In addition, internal resourcing pressures for staff in the agreement triage team have contributed to delays in the approval process. With highly skilled staff regularly achieving promotions, the Commission is streamlining its administrative processes to ensure that appropriate resourcing is maintained.

Table 7: Enterprise agreements—timeliness, approved agreements

Finalised agreements	Percentage of agreements finalised	Number of days from lodgment to finalisation		Percentage approved within timeframe		
		50% of matters	90% of matters	3 weeks	8 weeks	12 weeks
2016–17						
Approved without undertakings	51	15	50	58	93	99
Approved with undertakings	36	48	84	9	66	90

Note: In 2016–17, 12.4% of agreements were withdrawn and 0.5% were dismissed or not approved.

Table 8: Enterprise agreements—timeliness, type of agreement

Type of application	KPI ¹	Days from lodgment to finalisation							
		50% of matters (median)				90% of matters			
		2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
s.185—Single-enterprise	32 days	33	18	21	17	71	49	56	50
s.185—Greenfields	32 days	19	12	14	14	59	35	46	41
s.185—Multi-enterprise	32 days	42	28	34	26	124	85	90	54

¹ Key performance indicator from the Commission's 2016–17 portfolio budget statements, page 108.

SERVICE IMPROVEMENTS

The needs of the Commission's users are central to its service delivery. In 2016–17, with information gathered through the agreement triage process, the Commission developed new tools to assist parties to avoid common errors in enterprise agreement approvals. The Commission also streamlined the process for listing applications for approval of enterprise agreements.

TOOLS

Publishing information about the processes and statutory requirements on the Commission's website provides parties with an insight into the Commission's processes for assessing applications for agreement approval. On 29 December 2016, we published the **single enterprise agreement legislative checklist** which assists Members when determining agreement approval applications.

The **single enterprise agreement date calculator**, available since 1 May 2017, is a tool to help employers, employee representatives and bargaining representatives to ensure that they have met legislative timeframes. The calculator is intended to be used alongside **Making a Single Enterprise Agreement**, the Commission's step by step guide to making a single enterprise agreement that is not a greenfields agreement; and the **Guide: Notice of Employee Representational Rights**.

The **Benchbook: Enterprise Agreements** was also updated during 2016–17.

Various tools have been popular on the Commission's website:

- The **single enterprise agreement legislative checklist** was downloaded 4,676 times between 29 December 2016 and 30 June 2017.
- The **single enterprise agreement date calculator** was accessed 1,837 times between 1 May and 30 June 2017.
- **Making a Single Enterprise Agreement** was downloaded 8,479 times in 2016–17.
- **Benchbook: Enterprise Agreements** received 15,757 visits in 2016–17.

LISTING PROCESS

From 1 May 2017, following consultation with peak industry bodies, the Commission changed the way it processes approval applications for the majority of enterprise agreements. These changes are designed to ensure that the Commission's processes are more transparent, efficient and user focused.

Details of enterprise agreements that have been lodged for approval are published on the Commission's **Agreements in Progress** page on its website. This page also enables any party who has lodged an application to check on the progress of their application.

VARIATION AND TERMINATION OF ENTERPRISE AGREEMENTS

VARIATION OF AN ENTERPRISE AGREEMENT

The Commission may vary an agreement before the nominal expiry date. A variation of an enterprise agreement is made when a majority of affected employees who cast a valid vote approve the variation. The variation has no effect unless it is approved by the Commission under s.211 of the Fair Work Act.

An enterprise agreement may also be varied by the Commission to remove an ambiguity or uncertainty (s.217 of the Fair Work Act) on application by any of the following:

- one or more of the employers covered by the agreement
- an employee covered by the agreement
- an employee organisation covered by the agreement.

Under s.218 of the Fair Work Act the Commission must also review an enterprise agreement if the agreement is referred to it by the Australian Human Rights Commission under s.46PW of the *Australian Human Rights Commission Act 1986* (which deals with discriminatory industrial instruments).

Table 9 shows the number of applications lodged to vary an agreement in 2016–17.

Table 9: Enterprise agreements—applications to vary agreements

Type of application	2016–17	2015–16	2014–15	2013–14
s.210—Application for approval of a variation of an enterprise agreement	206	187	208	219
s.217—Application to vary an agreement to remove an ambiguity or uncertainty	21	32	38	171
s.218—Variation of an agreement on referral by the Australian Human Rights Commission	0	0	0	0

TERMINATION OF AN ENTERPRISE AGREEMENT

Under the Fair Work Act, an enterprise agreement continues to operate after its nominal expiry date until it is replaced by a new enterprise agreement or the Commission terminates the agreement on application. The process required to terminate an enterprise agreement depends on whether termination is sought before or after the agreement's nominal expiry date.

An employer and its employees may agree to terminate an enterprise agreement. Termination is agreed to by the employees if it is approved in a vote of the employees covered by the agreement, by a majority of the employees who cast a valid vote.

If an enterprise agreement has passed its nominal expiry date, any of the employers, employees or unions covered by the agreement may apply to the Commission for the termination of the agreement.

If the Commission decides to terminate an enterprise agreement under these provisions, the termination operates from the day specified in the Commission's decision. Table 10 shows the number of applications lodged to terminate an agreement in 2016–17.

Table 10: Enterprise agreements—applications to terminate enterprise agreements

Type of application	2016–17	2015–16	2014–15	2013–14
s.222—Application for approval of a termination of an enterprise agreement	97	92	91	91
s.225—Application for termination of an enterprise agreement after its nominal expiry date	303	311	161	99

THE YEAR AHEAD

In 2017–18, the Commission will focus on initiatives that improve the timeliness performance of applications to approve enterprise agreements.

The publication of the date calculator and the establishment of the new listing process in May 2017, together with addressing staff resourcing, should also result in significant improvements in timeliness in 2017–18.

SIGNIFICANT DECISIONS

Application for termination of the AGL Loy Yang Power Enterprise Agreement 2012

(AG2016/4580)–[2017] FWCA226–12 January 2017

AGL Loy Lang Pty Ltd applied to terminate the Loy Yang Power Enterprise Agreement 2012, which nominally expired on 31 December 2015. The application was opposed by the CFMEU, ASU, ETU, and Professionals Australia.

The agreement covers about 578 employees at the Loy Yang A Power Station (Station) and adjacent open cut brown coal Loy Yang Mine (Mine) at Traralgon in Victoria.

AGL Loy Yang cited a range of provisions in the agreement it claimed unduly restricted its ability to make changes to its operations to increase productivity and reduce inefficiencies.

AGL Loy Yang commenced negotiations for a new agreement with unions in July 2015. Various other applications and disputes were notified during the bargaining period.

AGL Loy Yang stated that it would continue to bargain in good faith for a new agreement in the event the agreement was terminated, stating that for a period of three months following the termination it would maintain certain conditions from the agreement it says were significantly more beneficial than the minimum terms and conditions under the Electrical Power Industry Award 2010.

The Commission was satisfied that it was not contrary to the public interest to terminate the agreement. The Commission was satisfied that the dispute was intractable as things currently stood and was persuaded that a change in the status quo through the termination of the agreement will better support good faith bargaining for a new agreement that delivers productivity benefits. The Commission decided that the termination of the agreement will change the bargaining dynamic but this is not counter to the object of a fair framework for collective bargaining and facilitating good faith bargaining.

The Commission accepted that there was opposition to the termination of the agreement from the employees, and found that this was not insignificant, and that their concern at the prospect of diminished terms and conditions of employment compared to the ones they currently enjoyed was understandable.

After taking into account all of the circumstances the Commission found it was appropriate to terminate the agreement. The termination took effect from 30 January 2017.

The CFMEU appealed the decision. The Full Bench found no error in the original decision apart from the consideration of the construction of clause 4 of the agreement, and determined that it was not necessary to quash the original Decision and Order. AGL Loy Yang offered an undertaking to effectively adhere to the clause 4 commitment for three years.

Appeal by Construction, Forestry, Mining and Energy Union against decision [2016] FWCA 6773] Re: Ron Southon P/L

(C2016/6006)–[2016] FWCFB 8413–19 December 2016

The Full Bench considered an appeal against a decision approving the Ron Southon P/L Enterprise Agreement 2016–2020 on the basis that the Member who approved the agreement erred in refusing to give the appellant access to the application documents and for failing to give reasons for that decision and the decision to not allow the appellant to be heard.

The appellant had sought to be heard in relation to the application on the basis that while it had no members that would be covered by the agreement, it had coverage of the work to be performed under it.

The Full Bench decided that the Member had erred by refusing to provide the appellant with the documents it sought. The principle of open justice applies equally to the Commission as it does to the courts. The Full Bench noted that although not required, it would have been preferable to have briefly set out the reasons for its refusal to hear the appellant. This would have made it clear to the appellant (and any other observer) why it was not considered appropriate or desirable to hear from them.

Permission to appeal was granted, the appeal was upheld and the original decision was quashed.

INDUSTRIAL ACTION AND DISPUTES

INDUSTRIAL ACTION

The Fair Work Act describes industrial action as any of the following:

- employees performing their work differently to the way it is normally performed, resulting in a limitation on, or delay in, the performance of the work
- employees placing a ban, limitation or restriction on the performance of work or the acceptance of work
- employees failing or refusing to attend or perform work
- employers locking out employees from their employment.

Industrial action does not include action taken by one party which is authorised or agreed to by the other party, or action based on a reasonable concern of an employee about an imminent risk to his or her health or safety.

The Fair Work Act distinguishes between ‘protected’ (lawful) industrial action taken during bargaining for a new enterprise agreement and ‘unprotected’ (unlawful) industrial action.

PROTECTED INDUSTRIAL ACTION

Protected industrial action is taken so that employees or employers can support or advance their claims during bargaining in relation to a proposed enterprise agreement.

Certain legislative requirements must be met before industrial action is protected. A majority of employees must approve a list of proposed actions in a secret ballot process, called a protected action ballot, conducted by the Australian Electoral Commission or an alternative approved ballot agent. The Commission can order a protected action ballot if satisfied that the employees' bargaining representative has been and is genuinely trying to reach agreement with the employer.

The Commission may make orders to stop or prevent industrial action in specified circumstances.

The Commission must suspend or terminate protected industrial action where it is endangering the life, personal safety, health or welfare of the population or part of it, or is causing significant damage to the Australian economy. The Commission must, as far as practicable, determine these applications within five days of lodgment, or make an interim order suspending the action if this timeframe cannot be met.

UNPROTECTED INDUSTRIAL ACTION

Where industrial action, or threatened industrial action, is unprotected, an application can be made to the Commission to stop or prevent it. The Commission must determine these applications within two days of lodgment, or make an interim order stopping the action within two working days.

DEALING WITH INDUSTRIAL ACTION

The Commission has processes in place to ensure that industrial action applications are dealt with quickly, particularly those relating to unprotected action or protected industrial action causing or threatening to cause significant economic harm to the parties.

When an urgent application is made, Commission staff alert the relevant panel head's chambers, ensuring that the matter can be quickly allocated to a Member. Panel heads and Members are contacted outside of normal business hours if necessary. Members may hear urgent matters out of hours, including on weekends.

If an application seeking an order that industrial action stop cannot be determined within two days, the presiding Member is able to issue an interim order until a final order is issued.

APPLICATIONS

The Commission received a total of 794 applications in relation to industrial action in 2016–17, a drop of 37.5 per cent from the previous year, as shown in Table 11. This included applications for protected action ballots; applications to extend, vary or revoke ballot orders; applications to suspend or terminate protected industrial action; and applications for orders to stop industrial action.

The single largest contributor to the overall drop in total applications was a 44 per cent reduction in the number of applications for a protected action ballot order. This can be explained, in part, by the unusually high number of applications during 2015–16 arising out of bargaining in the education sector in Queensland, where Catholic schools alone accounted for 272 applications for a protected action ballot order.

In 2016–17, the Commission received 43 applications for an order to stop or prevent industrial action that is not (or would not be) protected industrial action. This is a decrease of 36 per cent compared with 2015–16 and continues a trend of applications decreasing over the past three years.

In 2016–17, the Commission received a total of 10 applications to suspend or terminate protected industrial action, and six applications to suspend protected industrial action for a cooling off period.

Table 11: Industrial action—lodgments

Type of application	Number of applications			
	2016–17	2015–16	2014–15	2013–14
s.418—Application for an order that industrial action by employees or employers stop etc.	43	67	107	145
s.419—Application for an order that industrial action by non-national system employees or employers stop etc.	0	0	0	3
s.423—Application to suspend or terminate protected industrial action—significant economic harm etc.	2	1	0	1
s.424—Application to suspend or terminate protected industrial action—endangering life etc.	8	14	16	11
s.425—Application to suspend protected industrial action—cooling off	6	3	0	6
s.426—Application to suspend protected industrial action—significant harm to third party	0	0	1	3
s.437—Application for a protected action ballot order	537	960	641	627
s.447—Application for variation of protected action ballot order	7	21	6	12
s.448—Application for revocation of protected action ballot order	37	48	44	54
s.459—Application to extend the 30-day period in which industrial action is authorised by protected action ballot	150	154	133	124
s.472—Application for an order relating to certain partial work bans	4	4	7	3
Total	794	1,272	955	989

TIMELINESS

In 2016–17, the Commission achieved its portfolio budget statements key performance indicator timeliness benchmarks concerning industrial action applications. It dealt with 50 per cent of all applications within three days and 90 per cent of all applications within seven days, as shown in Table 12.

Table 12: Industrial action—timeliness, all applications

Type of application	KPI	50% of matters (median)				90% of matters			
		2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
Applications made under ss.418, 419, 423, 424, 425, 426, 437, 447, 448, 459 and 472. Lodgment to finalisation	3 days	3	3	3	2	7	8	7	6

The Commission also achieved its timeliness benchmarks concerning applications for orders to stop action that is not (or would not be) protected industrial action under s.418 of the Fair Work Act, as well as for applications for a protected action ballot under s.437.

As shown in Table 13, in 2016–17 the Commission dealt with 50 per cent of all s.418 applications within one day and 90 per cent within three days. The Commission also dealt with 50 per cent of all s.437 applications within four days, and 90 per cent within eight days of lodgment. Ninety per cent of matters were determined within nine days of lodgment.

Table 13: Industrial action—timeliness, protected action ballot orders and orders to stop action

Type of application	KPI	50% of matters (median)				90% of matters			
		2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
s.418—Application for an order that industrial action by employees or employers stop etc.—lodgment to first hearing	2 days	1	1	1	1	3	3	3	2
s.437—Application for a protected action ballot order—lodgment to first hearing	5 days	4	4	3	3	8	8	9	7
s.437—Application for a protected action ballot order—lodgment to determination	5 days	4	6	3	3	9	8	7	7

SERVICE IMPROVEMENTS

In January 2017, the Commission introduced a new mechanism to streamline its processes by requiring applications for a protected action ballot order to be accompanied by a statutory declaration, setting out the basis on which the Commission can be satisfied that statutory requirements have been met.

The lodgment of a statutory declaration allows uncontested applications to be decided ‘on the papers’ instead of requiring a formal hearing, improving the Commission’s efficiency and timeliness.

In March 2017, the Commission published the new **Benchbook: Industrial Action**, to provide information about the regulation of protected industrial action and unprotected industrial action under the Fair Work Act. The benchbook was developed by Commission Members in consultation with representatives of peak industry bodies.

THE YEAR AHEAD

The Commission will continue to consider ways to further streamline the process for applying for a protected action ballot, as well as the processes for other industrial action applications.

DISPUTES

The Commission can assist parties in resolving a wide range of disputes under the Fair Work Act.

The majority of matters dealt with by the Commission relate to disputes about the terms of an enterprise agreement or a modern award. The Commission's capacity to deal with such disputes depends on the nature of the dispute resolution term in the relevant enterprise agreement or modern award. Most commonly, the Commission is empowered to resolve a dispute through conciliation, mediation, expressing an opinion or making a recommendation. Some agreement terms also empower the Commission to arbitrate a dispute with a binding determination.

APPLICATIONS

Virtually all applications (99 per cent) to deal with disputes in relation to awards, agreements and contracts in 2016–17 were made under s.739 of the Fair Work Act, as shown in Table 14. A total of 1,940 applications were made under s.739, including 52 applications about flexible working arrangements. This is a small reduction from the previous year, when 2,033 applications were made under s.739.

As in previous years, only a small number of applications (10) were lodged under s.526 of the Fair Work Act, to deal with disputes where employees have been stood down due to industrial action, a breakdown of machinery or equipment or any other stoppage of work where the employer cannot reasonably be held responsible.

The number of dispute resolution applications made under s.709 of the repealed *Workplace Relations Act 1996*, as amended by the *Workplace Relations Amendment (Work Choices) Act 2005*, continued to decline. Applications of this type can be made by an individual covered by the award, agreement or contract; by a representative of employees; or by an employer.

Table 14: Dispute applications—lodgments

	2016–17	2015–16	2014–15	2013–14
FWA s.526—Application to deal with a dispute involving stand down	10	17	17	18
WRA s.699—Application to Fair Work Australia to have an alternative dispute resolution process conducted	0	1	2	13
WRA s.709—Application to Fair Work Australia to have a dispute resolution process conducted under a workplace agreement	6	11	37	69
FWA s.739—Application to deal with a dispute	1,888	2,001	2,078	2,366
FWA s.739—Application to deal with a dispute in relation to flexible working arrangements	52	32	41	50
Total	1,956	2,062	2,175	2,516

FWA = *Fair Work Act 2009*, WRA = *Workplace Relations Act 1996* (repealed).

TIMELINESS

In 2016–17, 50 per cent of applications under s.739 were resolved within 17 days (an increase of one day from 2015–16) and 90 per cent were resolved within 43 days (an increase of one day from 2015–16), as shown in Table 15.

Table 15: Dispute applications—timeliness

Type of application	50% of matters (median)				90% of matters			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
s.739—Application to deal with a dispute—lodgment to first conference (days)	17	16	16	17	43	42	45	46

Note: The number for 50% of matters was incorrectly shown as 20 and the number for 90% of matters was incorrectly shown as 47 in the 2015–16 Annual Report.

NEW APPROACHES

The New Approaches program gives effect to the Commission's function under s.576(2)(aa) of the Fair Work Act of promoting cooperative and productive workplace relations and preventing disputes.

New Approaches involves assisting parties to work together effectively to prevent disputes before they develop.

The New Approaches program enables the Commission to work with parties to:

- promote cooperative and productive workplace relations through interest-based approaches to bargaining for enterprise agreements
- develop new ways of resolving conflict or disputes at the workplace, using interest-based problem solving
- support the introduction of change, innovation and productivity improvements through new ways of collaborating, outside of the bargaining cycle and before a dispute occurs.

SERVICES

A New Approaches application can be lodged if a party and one or more employer and employee parties agrees at a workplace or business agree to the Commission's involvement.

The Commission may provide:

- training in interest-based bargaining and dispute resolution
- training and assistance in collaborative workplace change, including training for consultative committees
- help with enterprise bargaining and the development of joint processes to implement enterprise agreements.

MATTERS

At 30 June 2017, the Commission was facilitating 24 New Approaches matters. Such matters can remain open for a significant period, with the Commission providing ongoing support across a range of areas, including training, facilitation of negotiations, and the provision of advice and support to parties.

SERVICE IMPROVEMENTS

The Commission refined its case management process, information materials and training modules for New Approaches in 2016–17.

Commission Members regularly conduct New Approaches workshops in partnership with national, state and territory law councils and industrial relations societies. The interactive workshops have a practical focus, providing participants with tools to improve their enterprise bargaining and conflict resolution skills in the workplace. Nine workshops were conducted, around Australia, in 2016–17.

As part of the Commission's Workplace Relations Education Series, Deputy President Booth delivered a lecture at the University of Melbourne on 22 May 2017. The Deputy President spoke about interest-based bargaining, and how it can assist with fostering trust in negotiations. The lecture also featured presentations from parties involved in a recent New Approaches case at disability service provider House with No Steps.



Associate Professors John Howe and Anna Chapman, Melbourne Law School; Deputy President Anna Booth; Ms Kim Parish, House with No Steps; and Mr Angus McFarland, Australian Services Union.

THE YEAR AHEAD

Interest in the New Approaches program has been increasing as awareness of the program has increased. This is likely to lead to a greater number of applications in 2017–18.

New Members of the Commission will be offered New Approaches training to enable them to participate in the jurisdiction, and expand the capacity of the Commission, in 2017–18.

CASE STUDY

NEW APPROACHES

Throughout 2016–17, the New Approaches program has been central to the progress and finalisation of several matters in Western Australia in the mining, manufacturing and offshore oil and gas industries.

THE AUSTRALIAN MANUFACTURING WORKERS' UNION & ALCOA OF AUSTRALIA LIMITED

Alcoa is one of the world's largest integrated bauxite mining, alumina refining and aluminium smelting operations. The parties in this matter have been engaged in negotiations to replace their enterprise agreement since 2015, when it expired. The parties negotiated two agreements at the enterprise level using traditional, positional bargaining. However, when those proposed agreements were put to the vote in 2016 and 2017, both were strongly voted down by the workforce. While the parties were able to reach agreement in a number of areas, some core issues remained contested, including clauses relating to hours of work, additional hours and extended personal leave.

Mounting challenges across the sector required fresh thinking about the organisation and structure of the company, and both parties recognised the need to find a solution. Determined to move beyond the impasse, the parties agreed to lodge a New Approaches application in early 2017. Since that time, Deputy President Binet has conducted joint training sessions in interest-based bargaining and has facilitated a number of negotiations in which both sides have engaged in a collaborative approach to problem solving. The negotiating teams from both sides have been largely drawn from the workforce, and line managers and local delegates have been critical to the process.

As an independent body, the Commission has been able to assist the parties to move beyond positional bargaining, helping them to articulate their interests and then understand the other side's point of view. Matthew Gleeson, Employee Relations Director at Alcoa, explained:

'The parties agreed that there was no reasonable prospect of the traditional approach working any longer and so New Approaches could be helpful in resolving their issues. The Deputy President was helpful in presenting our views and the views of the other party, and was able to thoroughly articulate the key issues. It was because of this method that we were made aware of some concerns and worries, that were actually very addressable. We were then able to make progress.'

CASE STUDY CONTINUED

Ms Pearl Lim, Industrial Officer at the Australian Manufacturing Workers' Union, agreed, identifying that trust and transparency were the keys to the success of the process:

'Deputy President Binet was very good at getting the parties to prove their claims and explain their interests; had this been a normal negotiation, there would be no real mechanism to do this without deteriorating the relationship.'

The negotiations continue at the time of writing, after an in-principle deal was reached by the parties. Both sides acknowledge the benefits of continuing to use the process throughout the life of the agreement. Ms Lim noted that:

'It was difficult for both sides at the start with people falling back into old habits, but utilising this approach gave us a framework to approach each issue individually, with delegates very much a part of the process. I am hopeful the delegates and line managers talking continues because I believe both sides are keen to continue this productive dialogue.'

Mr Gleeson agreed, stressing that 'because of this process, people have developed respect for each other and there is a greater capability now to address issues together. The level of trust and cooperation has definitely heightened'.

GO OFFSHORE PTY LTD & MARITIME UNION OF AUSTRALIA

GO Offshore Pty Ltd provides vessel management, marine consultancy, offshore crewing, rig moving and all associated services to the offshore oil and gas industry.

Negotiations to replace the 2010 enterprise agreement between the parties had been ongoing for three years. An industry-level outcome could not be achieved, and vessel operators had been endeavouring to negotiate agreements suited to their particular operations. The process had been acrimonious and had involved significant legal action in both the Commission and the Federal Court of Australia. This was occurring during challenging times for the industry, in which the market for offshore vessel operators was slumping dramatically and a number of companies were operating under severe financial strain. A number had begun redundancy and other cost-cutting programs, which had adversely affected the Maritime Union of Australia (MUA) members.

GO Offshore and the MUA lodged a New Approaches application in November 2016, seeking assistance from the Commission to help progress negotiations for a replacement agreement. At the time the application was made, it had become increasingly necessary for GO Offshore to implement a replacement agreement in order to remain sustainable and competitive in the sector, particularly when tendering for new work opportunities in an already declining vessel operator market.

Initial attempts in the New Approaches process reached a roadblock in early 2017; an application for a protected action ballot order (PABO) sought by the MUA was conciliated by Deputy President Binet on 21 February 2017. In the course of the conciliation, the Deputy President encouraged the parties to try again, and both parties committed to recommencing interest-based negotiations. The Deputy President facilitated the New Approaches process after negotiations recommenced on 28 February 2017.

Wesley van der Spuy, Employee Relations Manager at GO Offshore, explained that the PABO operated as a much needed circuit-breaker:

'History has shown that the big stick approach wasn't working—it was getting us nowhere. The parties needed to be re-educated to listen to the other parties' interests. Traditional bargaining doesn't really work when you have two polarised views.'

Elyane Palmer, Industrial Officer at the MUA, reflected that New Approaches is set apart from other levers in bargaining by the need to make a joint application. It 'gives parties a different framework, and this structured framework can assist parties to reach a solution. On the back of a joint application, information sharing and transparency builds trust and helps to avoid other litigious options.'

With a recommitment to the process, an agreement between the parties was quickly reached on 3 April 2017. The *GO Offshore Pty Ltd Maritime Offshore Oil & Gas Ratings Enterprise Agreement 2017* went to ballot on 19 and 20 April 2017, and was voted up and lodged with the Commission for approval. The Commission fast-tracked the approval process and approved the agreement on 1 May 2017.

MMA OFFSHORE VESSEL OPERATIONS PTY LTD & MARITIME UNION OF AUSTRALIA

MMA Offshore and the MUA had been in negotiations for a new enterprise agreement for over four years when they decided to lodge a New Approaches application. The protracted negotiations using traditional bargaining had not been successful, and the parties had been through a significant number of legal interventions. Observing the experience of other parties in the sector, MMA Offshore and the MUA decided to try an interest-based approach. They lodged an application in late 2016 and participated in joint training in interest-based negotiation in November.

Michael Gillett, General Manager of Human Resources at MMA Offshore, identified this training session as an integral part of the process, as it made clear to both sides that they would both need to be genuine and committed throughout the process. 'If the parties were disingenuous,' he observed, 'it would fail.' In this case, both parties made a genuine effort to engage in the process.

CASE STUDY CONTINUED

Mr Gillett found that the structured nature of interest-based bargaining and the genuine engagement by all parties were critical success factors. 'The structure provides the basis for building trust and achieving success,' he observed. While the parties swapped back and forth between interest-based and more traditional bargaining throughout the negotiation that followed, Mr Gillett found that the introduction of interest-based bargaining principles and an agreed bargaining framework were the circuit-breaker needed to trigger the discussions. He noted that 'the driver for the parties is that they must genuinely want to work together'.

Will Tracey, National Deputy Secretary at the MUA, said that negotiations 'had reached a stalemate that seemed impassable' and that the relationship between the MUA and MMA Offshore had 'completely broken down'. Mr Tracey said that:

'The introduction of interest based bargaining, and facilitation of the negotiations in a context where each party had to discuss openly both their own and the other's interests, allowed us to overcome the entrenched dysfunction of the place we had reached and stopped at.'

He added that 'the final outcome was something that both the MUA and MMA can rightly say was in the best interests of their constituents', and that 99 per cent of MUA members voted in support of the new agreement.

The parties reached agreement at the conclusion of the process, and an application was made for approval of the *MMA Offshore Vessel Operations Enterprise Agreement 2017*. The agreement was approved on 26 May 2017.

CASE STUDY

ENCOURAGING COLLABORATION



NEWS CORP AUSTRALIA & AUSTRALIAN MANUFACTURING WORKERS' UNION

Sometimes companies and their employees have a tense relationship based on an adversarial history over many years. The Commission can help to foster a collaborative approach to workplace change, as demonstrated in the following case study involving News Corp Australia and the Printing Division of the Australian Manufacturing Workers' Union (AMWU).

Changes in production technology and declining consumer demand for newspapers had created a need for significant changes to operations at News Corp Australia's Melbourne Print Centre (MPC). In mid-2015, union officials approached senior managers to propose a collaborative approach to the workplace changes that could be achieved with the support and assistance of the Commission. News Corp Australia national managers responded positively to the proposal, although acknowledging that it was something of a 'leap of faith'. The senior managers, MPC managers and AMWU Printing Division officials held several meetings with the Commission to identify common goals.

CASE STUDY CONTINUED

The new approach began at the MPC in September 2015 and included the following key steps:

- A training session for MPC managers and union delegates was delivered by the Commission to introduce the principles of collaboration.
- Following the training session, unions and management worked together to establish the new collaborative approach. A statement of agreed objectives and shared principles were produced among other key materials.
- Under the Commission's guidance, the parties formalised the structure and processes to be followed under the new collaborative approach.
- The 'collaboration team' that comprised union delegates and MPC management drew up a list of key issues and identified the interests of the parties on these issues and alternative ways forward. Several issues were successfully resolved, including the use of casual staff, changes to shift operating hours and some aspects of rostering.
- Three unresolved matters were escalated to the Commission: penalty payments for the Christmas Day and Grand Final Day public holidays; redundancies; and rosters. After a series of meetings, all three matters were successfully resolved through a combination of negotiation and conciliation by the Commission, with resolution of the redundancy and roster issues being especially novel in the context of News Corp Australia.

The new collaborative approach at News Corp Australia is still in its early days, but already tangible benefits are being realised. Senior managers and union officials agree that there is improved morale, better communications and more trusting relationships. There have also been improvements in flexibility and productivity. The workplace changes were negotiated without stoppages of work and with fewer appearances before the Commission than would normally be expected. Work is underway to consolidate these changes at MPC and extend the new collaboration framework to other print sites around Australia.

This case study is based on a case study by Mark Bray, Leslee Spiess and Johanna Macneil, University of Newcastle, which is available on the Commission's website at <https://www.fwc.gov.au/disputes-at-work/new-approaches/new-approaches-case-studies>

INDIVIDUAL MATTERS

UNFAIR DISMISSALS

In line with the requirements of the Fair Work Act, the Commission deals with unfair dismissal applications in a way that is quick, flexible and informal, and balances the needs of employers and employees.

A person is unfairly dismissed within the meaning of the Fair Work Act if the dismissal was harsh, unjust or unreasonable; was not a genuine redundancy; and was not consistent with the Small Business Fair Dismissal Code (if the employer is a small business).

An unfair dismissal application must be lodged within 21 days after the dismissal took effect, although the Commission may grant an extension to this period in exceptional circumstances.

PROCESS

When an unfair dismissal application is lodged, the usual process is for specialist staff conciliators to work with the applicant and employer respondent to assist them in resolving the dispute, if they can. If it cannot be resolved with the assistance of a staff conciliator, the matter is referred to a Member of the Commission.

APPLICATIONS

Unfair dismissals are the largest category of applications received each year, representing more than 40 per cent of total applications made to the Commission.

During 2016–17, a total of 14,135 unfair dismissal applications were lodged with the Commission, similar to the total lodgments in previous reporting periods. The monthly pattern of lodgments was also similar to previous years.

The Commission finalised 14,587 applications in 2016–17, more than it received in the same period. The outcomes are shown in Table 16. Consistent with the legislative framework, in a significant majority of cases (93 per cent), the application was resolved informally by agreement of the parties through conciliation or because the applicant withdrew the application.

The Commission resolved the remaining applications by issuing a final decision or order. Only 2 per cent of applications were finalised by a decision about the merits of the application. The remainder of decisions issued by the Commission concerned a jurisdictional or procedural question.

Table 16: Unfair dismissal—finalisation of matters

	Number of matters			
	2016–17	2015–16	2014–15	2013–14
Resolved before conciliation	2,425	2,130	2,156	2,273
Resolved at conciliation	8,880	8,529	8,788	8,659
Resolved after conciliation and before a formal hearing	2,218	2,808	2,654	2,475
Resolved after hearing and before decision	36	104	52	41
Finalised by decision	1,028	1,457	1,527	1,200
Finalised by administrative dismissal	320	362	288	459
Finalised: jurisdiction objection upheld	401	769	890	374
Finalised at arbitration: application dismissed	125	130	161	175
Finalised at arbitration: application granted	182	196	188	192
Total finalisations	14,587	15,028	15,177	14,648
Percentage of applications granted (of all decisions)	17.7	13.5	12.3	16.0
Percentage of applications granted (of total finalisations)	1.2	1.3	1.2	1.3

MATTERS FINALISED BEFORE CONCILIATION

A total of 2,425 unfair dismissal applications were resolved or discontinued before conciliation, while still in the early stage of the case management process. This represents 17.7 per cent of all unfair dismissal applications finalised in 2016–17.

MATTERS RESOLVED BY CONCILIATION

Conciliation outcomes are agreed by the parties with the assistance of the Commission's specialist staff conciliators, who facilitate conferences with the parties soon after lodgment of an application. These conferences are usually held by telephone to reduce the need for parties and conciliators to spend time and money on travel.

Staff conciliation conferences were held within a median of 34 days of lodgment of the unfair dismissal application, as required by the Commission's corporate plan and portfolio budget statements.

In 2016–17, a total of 11,160 matters were dealt with through conciliation, as shown in Table 17. The parties resolved the matter by agreement in 80 per cent of cases.

Table 17: Unfair dismissal—conciliation outcomes

Outcome	2016–17	2015–16	2014–15	2013–14
Total matters settled	8,880	8,529	8,788	8,659
Total matters not settled	2,280	2,321	2,337	2,313
Total	11,160	10,850	11,125	10,972

The parties sometimes seek to resolve other issues through conciliation, including such matters as payment of outstanding entitlements. While the parties themselves decide on the terms of settlement, the Commission can assist with the drafting process.

Table 18 provides a breakdown of the outcomes of matters resolved at conciliation as reported to the Commission. In 2016–17, 62 per cent of conciliation resolutions involved both monetary and non-monetary items; 18 per cent were resolved on a purely non-monetary basis; and less than 1 per cent resulted in an employee being reinstated.

Table 18: Unfair dismissal—matters resolved at conciliation

Result type	Total results			
	2016–17	2015–16	2014–15	2013–14
Settlement—monetary items without reinstatement	1,660	1,712	1,750	1,846
Settlement—monetary and non-monetary items without reinstatement	5,511	5,122	5,147	4,740
Settlement—non-monetary items without reinstatement	1,627	1,624	1,820	2,008
Settlement—reinstatement	42	35	47	30
Settlement—reinstatement and monetary items	23	17	15	15
Settlement—reinstatement and non-monetary items	13	11	4	14
Settlement—reinstatement, monetary and non-monetary items	4	8	5	6
Total settled matters	8,880	8,529	8,788	8,659

Table 19 provides details of monetary amounts (including, but not limited to, compensation) agreed by the parties as part of terms of settlement. More than 20 per cent involved payments of less than \$2,000, almost 67 per cent of payments were less than \$6,000, and the vast majority of payments (84 per cent) were less than \$10,000.

Table 19: Unfair dismissal—conciliation resolutions involving monetary terms

Range (\$)	Number		Percentage of settlements involving monetary payment	
	2016–17	2015–16	2016–17	2015–16
0 to 999	553	539	8	8
1,000 to 1,999	1,002	922	14	13
2,000 to 3,999	1,893	1,866	26	27
4,000 to 5,999	1,344	1,288	19	19
6,000 to 7,999	790	717	11	10
8,000 to 9,999	474	447	7	7
10,000 to 14,999	643	608	9	9
15,000 to 19,999	251	236	3	3
20,000 to 29,999	163	153	2	2
30,000 to 39,999	49	57	<1	1
40,000 to maximum amount	32	26	<1	<1
Total	7,194	6,859	100	100

Note: Some numbers and percentages were not aligned with the correct payment ranges in the 2015–16 Annual Report.

MATTERS FINALISED BY COMMISSION MEMBERS

Where it is not resolved through conciliation or withdrawn, an application will be dealt with by a Commission Member, who will consider any jurisdictional objections (if not dealt with at an earlier stage) and the merits of the application.

An employer can lodge a jurisdictional objection if they believe that the Commission does not have the power under the Fair Work Act to deal with the employee's claim.

Of the applications finalised after conciliation in 2016–17, over two thirds (69 per cent) were withdrawn by the applicant after staff conciliation but before a formal hearing. Relatively few applications required a decision or order of the Commission, with 12 per cent of those referred to Members being finalised at a hearing concerning the employer's jurisdictional objection and fewer than 10 per cent of matters referred to Members being finalised through a decision on the merits of the application.

In 2016–17, the Commission heard 515 matters in which one or more jurisdictional objections were raised by the employer. Of those matters, 78 per cent were upheld in favour of the employer, resulting in the application being dismissed (as shown in Table 20). The most common reasons for upholding a jurisdictional objection were that the employee had not served the minimum period of employment or the application was lodged outside the 21 days allowed for lodgment.

Of the 22 per cent of matters in which the Commission did not uphold the employer's objection(s), the Commission granted the applicant an extension of time for lodgment of the unfair dismissal application in 37 per cent of cases.

Table 20: Unfair dismissal—jurisdiction outcomes

Result	2016–17	2015–16	2014–15	2013–14
Objection upheld	401	769	890	374
Applicant not dismissed	39	52	46	45
Employer not national system employer	5	8	13	5
Frivolous, vexatious	1	0	0	0
Genuine redundancy	22	49	83	34
Irregular and/or casual employee	4	0	3	1
Minimum period of employment not served	126	99	109	50
Multiple applications	2	0	2	0
No award, agreement or high-income employee	15	18	34	27
No employment relationship	7	13	19	25
No extension of time—up to and including 7 days late	61	153	180	51
No extension of time—more than 7 days late	115	342	368	127
No reasonable prospect of success	3	6	5	9
Termination consistent with Small Business Fair Dismissal Code	7	16	12	8
Unknown	5	24	33	6
Objection dismissed	114	265	266	159
Applicant dismissed	11	13	25	19
Application within time	21	30	20	N/A
Award, agreement and/or not high-income employee	7	13	10	3
Employment relationship	2	5	8	28
Extension of time—up to and including 7 days	25	106	82	34
Extension of time—more than 7 days	17	50	72	29
Minimum period of employment served	16	33	28	17

Table 20: Unfair dismissal—jurisdiction outcomes continued

Result	2016–17	2015–16	2014–15	2013–14
National system employer	1	0	3	0
No genuine redundancy	11	8	15	18
No multiple applications	0	0	0	3
Not frivolous, vexatious	0	2	0	0
Not irregular casual employee	4	3	2	5
Reasonable prospect of success	2	1	5	3
Termination inconsistent with Small Business Fair Dismissal Code	1	5	5	4
Unknown	6	6	7	12
Total	515	1,034	1,156	533

Note: An application may be found in or out of jurisdiction on multiple grounds. Accordingly, the results are not cumulative.

The Commission can dismiss unfair dismissal applications on other grounds not related to jurisdiction. Under s.587 of the Fair Work Act, an application can be dismissed, either at the Commission's initiative or on application by the employer, if it was not made in accordance with the Fair Work Act, is frivolous or vexatious, or has no reasonable prospect of success. Under s.399A of the Fair Work Act, an application can be dismissed for failure to attend a conference or hearing, failure to comply with a decision or order, or failure to discontinue an application after settlement.

Where it is clear on the face of an application that the applicant has not served the minimum employment period required to make an unfair dismissal claim, the matter is referred to the panel head for determination.

In 2016–17, the Commission dismissed a total of 320 unfair dismissal applications for one or more reasons that were not related to jurisdiction, as shown in Table 21. In 73 per cent of the 120 matters dismissed by the panel head under s.587 of the Fair Work Act, the application was incomplete or the applicant had not paid a filing fee or been granted a fee waiver.

Table 21: Unfair dismissal—applications dismissed under s.399A and s.587 of the Fair Work Act

Reason	2016–17	2015–16	2014–15	2013–14
Dismissed (s.587)	112	125	77	96
Dismissed by panel head (s.587)	120	112	107	265
Failure to attend	1	1	0	4
Incomplete application	32	21	12	12
Minimum employment period not met	34	40	52	166
No notice of discontinuance filed after settlement	2	8	0	6
No reasonable prospect of success	17	12	7	14
Non-compliance with directions	3	3	4	5
Premature application	0	0	0	6
Unpaid application	56	42	38	54
Verbal or written advice of discontinuance	0	0	0	14
Application to dismiss granted (s.399A)	88	125	104	98
Total	320	362	288	459

Note: An application can have multiple reasons why it was dismissed by a panel head. Accordingly, the results are not cumulative.

The Commission will determine the merits of an unfair dismissal application where it has not been resolved by the parties through conciliation (or otherwise withdrawn by the applicant) or dismissed by a Commission Member on jurisdictional or other grounds.

In 2016–17, Commission Members made 307 decisions about the substantive merits of the applications, which represents 2 per cent of all finalised unfair dismissal cases.

Commission Members dismissed 125 unfair dismissal applications, determining that the dismissal was fair.

In 160 cases (52 per cent of those considered on the merits), Commission Members granted various forms of remedy for unfair dismissal. The remedies were:

- monetary outcomes (135 matters)
- reinstatement without compensation for lost remuneration (10 matters)
- reinstatement plus compensation for lost remuneration (15 matters).

In the remaining 22 cases (8 per cent of those considered on the merits), a remedy was either not granted (six matters) or was yet to be determined at the end of the 2016–17 (16 matters).

Details of the decisions and remedies are shown in tables 22 to 24.

Table 22: Unfair dismissal—arbitration outcomes

Result	2016–17	2015–16	2014–15	2013–14
Application dismissed—dismissal was fair	125	130	161	175
Application granted—no remedy granted	6	7	10	8
Application granted—monetary	135	135	141	150
Application granted—reinstatement	10	12	12	9
Application granted—reinstatement and lost remuneration	15	18	15	25
Application granted—remedy to be determined	16	24	10	N/A ¹
Total	307	326	349	367

¹ Data was not collected.

Table 23: Unfair dismissal—arbitration outcomes, application granted with compensation

Range (\$)	2016–17	2015–16	2014–15	2013–14
0 to 999	2	5	3	7
1,000 to 1,999	12	10	15	9
2,000 to 3,999	27	18	17	20
4,000 to 5,999	20	16	21	18
6,000 to 7,999	12	14	15	12
8,000 to 9,999	9	11	10	17
10,000 to 14,999	14	21	20	18
15,000 to 19,999	17	13	14	8
20,000 to 29,999	13	15	15	13
30,000 to 39,999	4	6	5	8
40,000 to maximum amount	3	4	2	10
No loss of wages	0	0	1	4
Unknown ¹	2	2	3	6
Total	135	135	141	150

¹ Unknown as administrative data is incomplete.

Table 24: Unfair dismissal—arbitration outcomes, application granted with reinstatement and lost remuneration

Range (\$)	2016–17	2015–16	2014–15	2013–14
0 to 999	0	0	0	0
1,000 to 1,999	0	0	1	1
2,000 to 3,999	0	2	1	2
4,000 to 5,999	0	1	1	1
6,000 to 7,999	1	2	1	2
8,000 to 9,999	1	1	0	1
10,000 to 14,999	2	0	2	1
15,000 to 19,999	2	2	1	3
20,000 to 29,999	1	1	2	1
30,000 to 39,999	0	2	1	1
40,000 to maximum amount	1	2	0	4
No loss of wages	2	2	2	4
Unknown ¹	5	3	3	4
Total	15	18	15	25

¹ Unknown as administrative data is incomplete.

TIMELINESS

In 2016–17, the median time from lodgment of an unfair dismissal application to conducting a staff conciliation conference was 34 days. The Commission has taken steps to trial different case management practices for unfair dismissal applications. One of the effects has been an improvement in the timeliness performance. The overall time from lodgment to finalisation of cases improved in 2016–17, with 90 per cent of cases finalised within 102 days of lodgment, an improvement of 21 days from 2015–16 and 31 days from 2014–15.

Table 25 shows the Commission's performance against its timeliness key performance indicators in 2016–17 and Table 26 shows timeliness from lodgment to finalisation of the application.

Table 25: Unfair dismissal—timeliness, lodgment to first conciliation

s.394 applications	2016–17	2015–16	2014–15	2013–14
Target: median time of 34 days	34	34	28	46
No. of matters	11,611	11,157	11,601	11,427

Table 26: Unfair dismissal—timeliness, lodgment to finalisation

s.394 applications	50% of matters (median)				90% of matters			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
Lodgment to finalisation (days)	37	42	35	51	102	123	133	146

CASE STUDY

CONCILIATION



The following unfair dismissal matter was dealt with at a voluntary conciliation conference before a staff conciliator. The telephone conference took 90 minutes.

An employee applied to the Commission for a remedy, on the basis that she believed she had been unfairly dismissed. The applicant applied within the statutory timeframe set of 21 days from the date of termination.

The applicant represented herself at the conciliation. She worked full time for approximately two years, until she was instantly dismissed for allegedly bullying a colleague. She claimed there was *no valid reason* for the dismissal, as the allegations were not true, and that the termination of employment process was unfair because of a lack of *procedural fairness*. She claimed that she was not given details of the bullying allegations or provided with an opportunity to put her side of the story during the disciplinary process.

The employer was represented by a solicitor at the conciliation. The employer denied the applicant's claim and provided a number of documents, including its findings from an internal investigation that the applicant had breached the occupational health and safety policy.

The conciliator spoke with the applicant at the beginning of the conference and provided assurances that, as a self-represented party, she would receive an equal opportunity to have her say and provide responses.

When the employer joined the conference, the conciliator provided a brief outline of the process and the conciliator's role. The conciliator attempts to facilitate resolution of the dispute by the parties themselves on a confidential and without prejudice basis. While they can discuss the strengths and weaknesses of a case and any risks in taking a matter further, conciliators cannot provide legal advice or make findings.

The conciliator advised that, as the applicant was self-represented, the parties would be afforded a three-day cooling-off period if the matter settled. This provides an opportunity to seek professional advice and to reflect on the agreement before signing it. If either party changes their mind about the agreement, the matter will be referred to a Commission Member for a binding decision. The conciliator also advised that the parties could agree to waive the cooling-off period.

Each party was given the opportunity to provide an opening statement. The conciliator then facilitated the discussion by asking questions and raising points of clarification with each party in areas where the parties differed in their recollections or interpretation of what had happened. This assisted the parties to focus on the major issues in dispute.

The conciliator then spoke separately with each of the parties through a series of private sessions, identifying the parties' core interests and objectives and reality testing their expectations and settlement proposals.

REALITY TESTING

Reality testing provides a realistic basis for assessing the best, worst and most realistic alternatives to a negotiated agreement. This helps the parties to then assess legal risks, facts, evidence and the potential outcome of arbitration.

The applicant's opening settlement offer was for monetary compensation. The employer declined to offer any money in settlement. The employer was confident that it had established a valid reason for termination, and its position was bolstered by two potential further witnesses.

The parties agreed to settle the application:

- The employer would pay the applicant's outstanding entitlements.
- The employer would provide a statement of service for the applicant, outlining her period of service, her position and the duties she performed.
- The employer would nominate an individual from the company to be a contact person for any queries relating to the statement of service.
- The employer agreed to rescind the dismissal and allow the applicant to resign as at an agreed date.

Using the Commission's standard template, the conciliator prepared terms of settlement that reflected the substantive elements agreed to and provided for mutual confidentiality, non-disparagement and mutual releases in full and final settlement of all matters.

The parties were reminded of the three-day cooling-off period, which the applicant chose to take in order to reflect on the settlement and consider seeking legal advice.

The matter was finalised, based on the agreed settlement outcome, once the cooling-off period expired.

THE YEAR AHEAD

The Commission anticipates that the number of unfair dismissal applications lodged will remain steady in 2017–18. Work will continue in relation to assessing the effectiveness of the workplace advice clinic program and similar programs in equipping parties in unfair dismissal matters to set realistic expectations concerning timeframes and outcomes.

As part of our goal of continuous improvement, the Commission will review client satisfaction levels in 2017–18. The review will cover important aspects of the unfair dismissal application process, including impartiality, even-handedness and the clarity of information provided.

GENERAL PROTECTIONS DISPUTES

The general protections provisions under Part 3–1 of the Fair Work Act aim to protect workplace rights and freedom of association and to protect people from discrimination within their workplace.

DISPUTES INVOLVING DISMISSAL

A person who believes that his or her employment has been terminated in breach of the general protections provisions may, within 21 days of their dismissal taking effect, apply to the Commission under s.365 of the Fair Work Act.

The Commission is required to assist parties to resolve general protections disputes by conducting private conferences involving mediation or conciliation. A Member must issue a certificate if all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

If the matter is not resolved at the Commission, the applicant may apply to either the Federal Court of Australia or the Federal Circuit Court of Australia to have the dispute determined. The Commission is obliged to advise the parties if it believes that such a court application would not have a reasonable prospect of success.

As an alternative, where the matter is not settled at conference and all parties consent, the Commission can determine the matter by issuing a decision that is binding on the parties (consent arbitration).

Consistent with previous years, in 2016–17 only a small number of parties to general protections disputes involving dismissal consented to the Commission determining the matter by issuing a binding decision. Of the 905 applications which were not settled during a conference, there were 23 in which the parties agreed to consent arbitration by a Commission Member, as shown in Table 27.

APPLICATIONS

In 2016–17, 3,729 applications were made to the Commission to deal with general protections disputes involving dismissal. This was an increase of 14 per cent from 2015–16, but slightly fewer than were made in 2014–15.

Table 27: General protections disputes involving dismissal—lodgments

Matter type	No. of applications lodged				Total finalised				Manner finalised	No. of matters			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14		2016–17	2015–16	2014–15	2013–14
s.365— General protections	3,729	3,270	3,382	2,879	3,564	3,060	3,475	2,778	Certificate issued	905	755	1,073	967
									Without certificate issued	2,659	2,305	2,402	1,811

CONCILIATION

In an approach similar to the Commission's process for unfair dismissal matters, when a general protections application involving dismissal is lodged with the Commission, specialist staff conciliators work with the parties to try to reach an agreement between the parties to resolve the dispute. Staff conciliators conduct conferences under delegation from the President. The use of staff conciliators allows the Commission to assist parties to resolve their disputes without the need for costly court proceedings, while freeing up Commission Members to undertake more complex work.

OUTCOMES

In 2016–17, of the 3,564 general protections matters involving dismissal that were finalised, 73 per cent of applications were resolved at the Commission (see Table 28). Of those, 58 per cent were resolved at or after a conciliation conference; 12 per cent were withdrawn by the applicant before or after a conference; and 3 per cent were dismissed or refused because of late lodgment.

Table 28: General protections disputes involving dismissal—outcomes of applications

Type of application	Number of matters		Percentage of total	
	2016–17	2015–16	2016–17	2015–16
Application dismissed	15	29	<1	<1
Dispute not resolved: certificate issued	905	755	25	25
Dispute resolved at conciliation	2,012	1,631	56	53
Extension of time (to apply) refused	98	99	3	3
Withdrawn after conciliation	71	83	2	3
Withdrawn before a conference	433	454	12	15
Withdrawn before or after a conference or hearing to deal with extension of time	30	9	1	<1
Total	3,564	3,060	100	100

Where parties resolve a matter through conciliation, the terms of settlement can include other matters (such as payment of outstanding entitlements) in addition to any compensation paid in relation to the dismissal. Figures for 'monetary payment' in Table 29 and Table 30 include payments that do not arise under the Fair Work Act.

For applications resolved at conciliation, the outcomes were:

- monetary payment—32 per cent
- non-monetary items—21 per cent
- monetary payment and non-monetary items—45 per cent.

In 2 per cent of matters, the outcome was not disclosed to the Commission.

Table 29: General protections disputes involving dismissal—conciliation outcomes

Result type	Number of matters		Percentage of total	
	2016–17	2015–16	2016–17	2015–16
Dispute resolved: monetary	646	576	32	35
Dispute resolved: monetary and non-monetary items	894	614	45	38
Dispute resolved: non-monetary items only	430	344	21	21
Dispute resolved: details unknown	42	97	2	6
Total	2,012	1,631	100	100

Note: The percentage for 'Disputes resolved: monetary and non-monetary items' was incorrectly shown as 28% in the 2015–16 Annual Report.

Table 30: General protections disputes involving dismissal—conciliation resolutions involving monetary payment

Range (\$)	Number		Percentage of settlements involving monetary payment	
	2016–17	2015–16	2016–17	2015–16
0 to 999	146	117	9.5	9.8
1,000 to 1,999	190	178	12.3	15.0
2,000 to 3,999	323	224	21.0	18.8
4,000 to 5,999	229	180	14.9	15.1
6,000 to 7,999	128	91	8.3	7.7
8,000 to 9,999	69	52	4.5	4.4
10,000 to 14,999	147	108	9.5	9.1
15,000 to 19,999	81	54	5.3	4.5
20,000 to 29,999	64	45	4.2	3.8
30,000 to 39,999	29	26	1.8	2.2
40,000 to 49,999	9	16	<1	1.3
50,000 to 59,999	5	7	<1	<1
60,000 to 69,999	12	7	<1	<1
70,000 to 79,999	7	6	<1	<1
80,000 to 89,999	8	4	<1	<1
90,000 to 99,999	1	6	<1	<1
100,000 +	9	13	<1	1.1
Unknown	83	56	5.4	4.7
Total	1,540	1,190	100	100

Note: The \$90,000–\$99,999 range was incorrectly duplicated in the 2015–16 Annual Report.

Of the remaining 25 per cent of general protections applications involving dismissal that were finalised (905 applications), all were finalised with a certificate being issued by a Commission Member under s.368 of the Fair Work Act. This is similar to the proportion of cases finalised by issuing a certificate in 2015–16.

TIMELINESS

The median time from lodgment of a general protections application involving dismissal to a conciliation conference in relation to that application was 58 days in 2016–17, as shown in Table 31, an increase from 45 days in 2015–16. This increase reflects staff resourcing pressures in 2016–17, with staff being allocated to deal with conciliations for both unfair dismissal applications and general protections applications involving dismissal.

The number of applications finalised in 2016–17 was 3,564, a significant increase of nearly 17% on the 3,060 matters that were finalised in the previous year.

Table 31: General protections disputes involving dismissal—timeliness

Type of application	50% of matters (median)				90% of matters			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
General protections disputes involving dismissal—lodgment to first conciliation (days)	58	45	31	29	75	68	62	59
General protections disputes involving dismissal—lodgment to finalisation (days)	62	50	37	41	103	103	97	106

CONSENT ARBITRATION

If the Commission has issued a certificate that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful, the parties can agree to consent arbitration.

Applications for consent arbitration increased in 2016–17, as shown in Table 32, but represented less than 3 per cent of disputes not resolved by conciliation.

Table 32: General protections disputes involving dismissal—applications for consent arbitration

Type of application	2016–17	2015–16	2014–15	2013–14
s.365—Application to deal with contraventions involving dismissal (consent arbitration)	23	18	16	8

THE YEAR AHEAD

The Commission will review and develop information tools and resources to ensure that parties are equipped with information that allows them to better understand the Commission's powers and processes and the legislative framework.

DISPUTES NOT INVOLVING DISMISSAL

An employee who believes that he or she has been subjected to adverse action for a prohibited reason may make a general protections application to the Commission under s.372 of the Fair Work Act. Applications are made under s.372 where there is an ongoing employment relationship.

As with general protections disputes involving dismissal, if a dispute (not involving dismissal) is not resolved by the Commission, the applicant may apply to either the Federal Court of Australia or the Federal Circuit Court of Australia to have the dispute determined. The Commission must advise the parties if it believes that such a court application would not have a reasonable prospect of success.

Conciliation conferences for general protections disputes not involving dismissal are conducted by Commission Members.

In 2016–17, the Commission received 828 applications under s.372 of the Fair Work Act, a decrease from 859 in the previous year, as shown in Table 33.

Table 33: General protections disputes not involving dismissal—lodgments

Type of application	Number of matters			
	2016–17	2015–16	2014–15	2013–14
s.372—General protections—other contraventions	828	859	879	779

In 2016–17, the Commission conducted the first conference within 48 days of lodgment for 90 per cent of applications. This was an improvement on the previous year's result, as shown in Table 34.

Table 34: General protections disputes not involving dismissal—timeliness

Type of application	50% of matters (median)				90% of matters			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
s.372—General protections—other contraventions lodgment to first conference (days)	23	27	29	26	48	54	55	50

UNLAWFUL TERMINATION DISPUTES

Employees who fall outside the coverage of the Fair Work Act's general protection provisions (Part 3–1) can lodge an unlawful termination application under Part 6–4 of the Fair Work Act.

The broad application of the general protections scheme means that not many applicants rely on the unlawful termination provisions, which apply mainly to non-national system employees. This is reflected in the considerably lower number of unlawful termination applications than general protections dispute applications (both involving and not involving dismissal) in 2016–17, as in previous years.

The processes in the Fair Work Act for dealing with unlawful termination applications are broadly similar to those for general protections disputes. An application must be lodged within 21 days after the applicant's employment was terminated. The Commission must attempt to resolve the dispute through private conference and, if unsuccessful, must issue a certificate stating that it is satisfied that all reasonable attempts at resolution have been, or are likely to be, unsuccessful.

The parties can consent to the Commission making a binding decision through consent arbitration. The Commission must advise the parties if there is no reasonable prospect of successfully resolving the dispute either during consent arbitration before the Commission or through a court application.

APPLICATIONS

In 2016–17, the Commission received 109 unlawful termination applications, an increase of 35 per cent. While this is a considerable increase compared to 2015–16, the number of unlawful termination applications lodged in 2016–17 is consistent with the number of applications in 2014–15.

The Commission finalised 111 unlawful termination applications in 2016–17, as shown in Table 35. In 11 per cent of cases the Commission issued a certificate stating that it was satisfied that all reasonable attempts to resolve the dispute (other than by consent arbitration) had been, or were likely to be, unsuccessful.

Table 35: Unlawful termination disputes—lodgments

Matter type	No. of applications lodged				Total finalised				Manner finalised	No. of matters			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14		2016–17	2015–16	2014–15	2013–14
s.773— Unlawful termination	109	81	114	130	111	82	120	128	Certificate issued	12	10	15	9
									Without certificate issued	99	72	105	119

TIMELINESS

In 2016–17, 90 per cent of unlawful terminations matters were finalised in 63 days, as shown in Table 36, a significant improvement in time taken to finalisation compared with 87 days in 2015–16.

Table 36: Unlawful termination disputes—timeliness

Type of application	50% of matters (median)				90% of matters			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
s.773—Lodgment to first conference (days)	24	30	39	37	55	63	67	57
s.773—Lodgment to finalisation (days)	13	20	35	25	63	87	131	75

ANTI-BULLYING

The anti-bullying jurisdiction allows a worker who believes that he or she has experienced repeated unreasonable behaviours at work to apply for an order to stop those behaviours. The behaviours can also be directed towards a group that the worker belongs to.

Reasonable management action carried out in a reasonable manner is excluded from the definition of bullying behaviour.

Applicants must work in a business that is constitutionally-covered, as defined in s.789FD of the Fair Work Act.

To make an order to stop bullying, the Commission must be satisfied that the behaviours have created a risk to the applicant worker's health and safety, and that there is a risk that the behaviours will continue.

The Commission focuses on resolving the matter and enabling normal working relationships to resume.

The case management process adopted by the Commission is designed to facilitate the informed, safe and constructive engagement of all parties. The Commission seeks to initially progress appropriate matters through early preliminary conferences to establish an appropriate basis for the parties' conduct while the substantive application is being considered.

Once a finding has been made, a Member may make any order he or she considers appropriate to prevent the behaviours continuing; however, the Commission cannot order reinstatement, compensation or a monetary amount.

APPLICATIONS

The number of anti-bullying applications and outcomes has been relatively consistent since the jurisdiction commenced, on 1 January 2014.

In 2016–17, a total of 722 applications for an order to stop bullying were lodged with the Commission. This was consistent with the number of applications in previous years, as shown in Table 37.

Table 37: Anti-bullying—applications

Matter type	No. lodged				No. finalised			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
s.789FC—Anti-bullying	722	734	694	343	695	705	676	197

Note: The anti-bullying jurisdiction under the Fair Work Act commenced on 1 January 2014. Figures for 2013–14 are for six months from 1 January to 30 June 2014.

A total of 695 applications for an order to stop bullying were finalised in 2016–17:

- 171 applications were withdrawn early in the case management process
- 125 applications were withdrawn before proceedings
- 188 applications were resolved during the course of proceedings
- 151 applications were withdrawn after a conference or hearing and before a decision
- 60 applications (9 per cent) were finalised by a decision.

Table 38: Anti-bullying—finalisation

	2016–17	2015–16	2014–15	2013–14 ¹
Applications withdrawn early in case management process ²	171	237	185	59
Applications withdrawn before proceedings ³	125	115	122	34
Applications resolved during the course of proceedings ⁴	188	191	191	63
Matters withdrawn after a conference or hearing and before decision	151	110	118	20
Applications finalised by decision	60	52	60	21
Total	695	705	676	197

1 The anti-bullying jurisdiction commenced on 1 January 2014; therefore, this data relates to the period from 1 January 2014 to 30 June 2014.

2 Applications withdrawn before substantive proceedings—while the matter is with the case management team or panel head.

3 Includes matters that are withdrawn before a proceeding being listed; before a listed conference, hearing, mention or mediation before a Commission Member is conducted; and before a listed mediation by a staff member is conducted. This also includes matters where an applicant considers the response provided by the other parties to satisfactorily deal with the application.

4 Includes matters that are resolved as a result of a listed conference, hearing, mention or mediation before a Commission Member or listed mediation by a staff member.

The majority of matters in this jurisdiction are resolved without the need to make an order. These matters can be resolved in various ways, including the employers' recognition of, and response to, a workplace complaint and subsequent implementation of workplace solutions such as providing training or adjusting lines of reporting.

Of the 60 matters that were finalised by issuing a decision, only three applications for an order to stop bullying resulted in final orders being made in 2016–17, as shown in Table 39. Ten substantive applications were dismissed.

Table 39: Anti-bullying—applications finalised by decision

Decisions	2016–17	2015–16	2014–15
Matters finalised by administrative dismissal	41	28	47
Matters finalised at jurisdiction	6	3	2
Substantive applications granted	3	12	1
Substantive applications dismissed	10	14	10
Total applications finalised by decision	60	57	60

Note: The figure for 'Total applications finalised by decision' was incorrectly shown as 52 in the text of the 2015–16 Annual Report.

TIMELINESS

The Fair Work Act requires the Commission to start to deal with an application for an order to stop bullying within 14 days of lodgment. Similar to the approach to general protections applications not involving dismissal, this legislative timeframe recognises that relationships at work are ongoing while the Commission is dealing with the application.

In 2016–17, the Commission maintained its high level of performance, with a median of one day taken to begin to dealing with an application, as shown in Table 40. This is consistent with previous reporting periods and demonstrates the Commission’s commitment of high levels of support and resourcing to this jurisdiction.

Generally, matters are commenced when the case management team, working under delegation from the President, contacts applicants to confirm their intention to proceed. Contact with each of the other parties follows promptly.

Table 40: Anti-bullying—timeliness

Time taken to start to deal with matter (days)	2016–17	2015–16
Median	1	1
100th percentile ¹	6	5

¹ The 100th percentile is the longest time taken to deal with a matter.

SERVICE IMPROVEMENTS

The Commission continually reviews the operation of the anti-bullying jurisdiction in an effort to improve administrative efficiency and the experience of parties to anti-bullying matters.

During 2016–17, the Commission released a series of videos that form the anti-bullying virtual tour. The tour is designed to assist all parties to understand the unique elements of the jurisdiction and to be properly prepared to participate in the process. As part of a review of the Commission’s publications, references to the tour have been included in correspondence and the **Guide: Anti-bullying**.

As in past years, the Commission’s anti-bullying information resources were popular in 2016–17. The Commission received:

- more than 6,550 telephone enquiries
- 100,621 website hits related to anti-bullying
- 41,698 visits to the online eligibility quiz for anti-bullying applications
- 15,263 website visits to the **Benchbook: Anti-bullying**.

EXTERNAL REVIEW

In 9 February 2017, the Department of Employment released a post-implementation review of the anti-bullying jurisdiction, including the Commission's implementation of the jurisdiction.

The review concluded that the anti-bullying jurisdiction should be retained, finding that the Commission has taken a balanced and pragmatic approach to claims of workplace bullying, applying reasonable boundaries in relation to the responsibilities and liability of employers. Commission Members were commended for their practical, sensitive and focused approach to dealing with anti-bullying matters. More detailed information about the review is provided on page 100.

THE YEAR AHEAD

The Commission expects that the number of applications for an order to stop bullying will remain relatively constant in 2017–18.

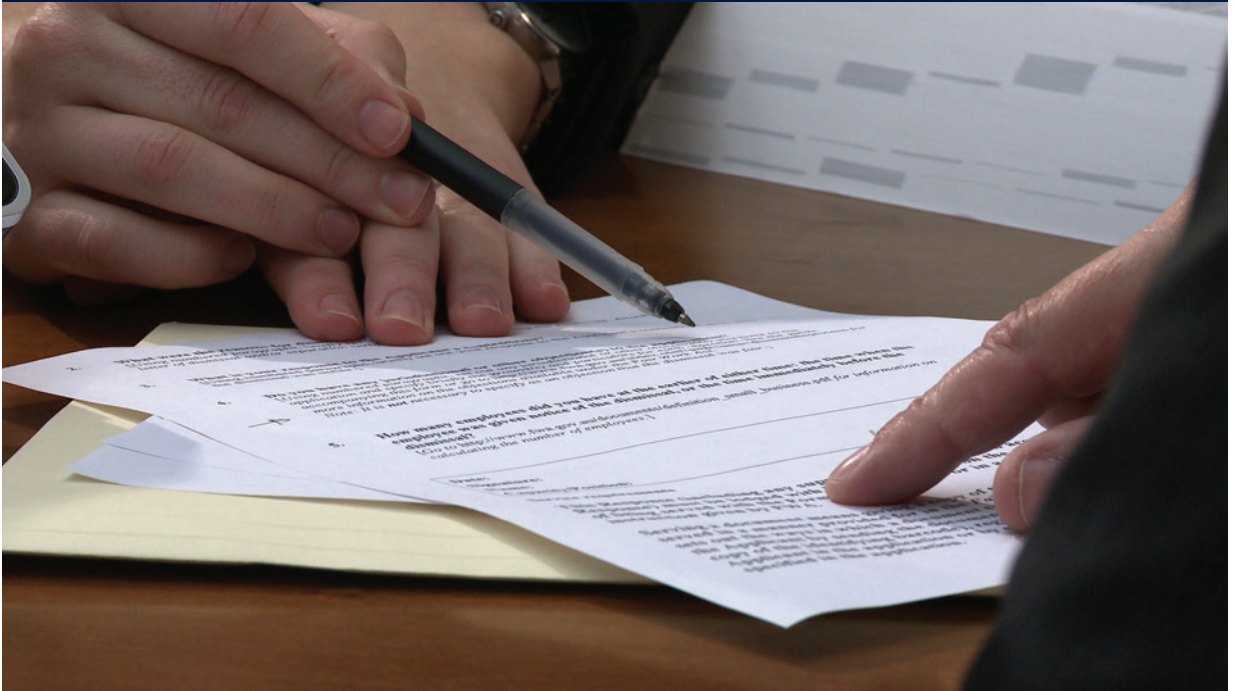
Our approach to the anti-bullying jurisdiction has been based on continual review, taking into account experience and any feedback received from internal and external stakeholders. This will continue in the year ahead.

We will continue to engage in community education by participating in speaking engagements and other awareness-raising activities. The head of the anti-bullying panel will participate in the Safe Work Australia Virtual Seminar Series in 2017–18.

Training has been provided to some Members and all staff who work in the anti-bullying jurisdiction, to develop awareness in dealing with parties experiencing mental health issues. In 2017–18, we will consider how such training can be rolled out more broadly.

IN FOCUS

POST-IMPLEMENTATION REVIEW



On 9 February 2017, the Department of Employment released a post-implementation review assessing whether the right of recourse to the Fair Work Commission (the Commission) for workers who have been bullied at work remains appropriate. The review considered how effectively and efficiently the jurisdiction had met its objectives, as well as the Commission's approach in meeting those objectives.

The department conducted a survey of parties, which was facilitated by the Commission, and invited submissions from the community and key stakeholders. It interviewed a number of peak bodies and representative organisations operating in the jurisdiction. It also examined preliminary results of a Commission survey of parties which began in 2015–16.

The review made positive findings about the Commission's role in providing assistance and making decisions:

'The individual right of recourse to the Commission is readily accessible to those eligible to apply and the Commission has helped clarify important issues for businesses, workers and the community as a whole.'

- *Stakeholders largely agreed that the information provided by the FWC (through its website, hotline and Benchbook) is useful.*
- *Clarification around what constitutes workplace bullying has been beneficial for all stakeholders.*
- *There remains some confusion about the meaning of 'reasonable management action carried out in a reasonable way' but the case law is helping to shed light on this concept.'*

The review acknowledged that legislative timeframes for commencing workplace bullying applications (within 14 days) have been achieved. However, the complexity of cases before the Commission has meant that it may not be reasonable or appropriate to expect the rapid resolution of these matters, particularly where they have developed over some time.

It found that the new jurisdiction has resulted in some positive cultural change in workplaces, including by encouraging businesses to more proactively engage in preventing bullying. Examples included requiring staff to undergo management training, putting anti-bullying policies in place and devising internal processes to resolve bullying complaints promptly.

While the review's considerations and findings reflect the contested and complex nature of the anti-bullying jurisdiction, it supported retention of the jurisdiction given the benefit to the community.

For more information on the Post-Implementation Review see the Commission's website: <http://ris.pmc.gov.au/2017/02/09/changes-fair-work-act-2009>

APPEALS OF COMMISSION DECISIONS

A person who is aggrieved by a decision or order made by a Member of the Commission or the General Manager can apply to appeal that decision or order. Appeals are heard by a Full Bench of the Commission, which is generally made up of three Members, one of whom is a Presidential Member.

The Full Bench will usually determine two issues—whether permission to appeal should be granted, and whether there was an error in the original decision. The Commission must grant permission to appeal if it is satisfied that it is in the public interest to do so (s.604(2) of the Fair Work Act). A higher standard applies to appeals from decisions in unfair dismissal matters (s.400 of the Fair Work Act). The ‘public interest’ is not defined in the Act, but it generally refers to a benefit or advantage to the whole community, as opposed to an individual. The task of assessing whether the public interest test is met is a discretionary one involving a broad value judgment. Some examples of considerations which have traditionally been adopted in granting leave include that the decision is attended with sufficient doubt to warrant its reconsideration, that the Commission may have exceeded its jurisdiction in the original decision, and that substantial injustice may result if leave is refused.

A higher standard applies to appeals from decisions in unfair dismissal matters. If the error that is alleged is an error of fact, then the appellant must persuade the Full Bench that it is a significant error of fact. Further, s.400(1) of the Fair Work Act provides that permission to appeal from an unfair dismissal decision must not be made unless the Commission considers that it is in the public interest to do so.

If permission to appeal is granted, and the appeal is upheld, the Full Bench may:

- confirm, quash or vary the decision
- make a further decision in relation to the matter that is the subject of the appeal
- refer the matter that is the subject of the appeal to a Commission Member for further action.

PERMISSION TO APPEAL PROCESS

The Commission’s permission to appeal process applies to appeals for unfair dismissal matters and general protections consent arbitration matters.

Under the process, a Full Bench determines whether to grant permission to appeal as a threshold issue, so that parties do not incur the costs of preparing and filing submissions on the merits of an appeal that may not proceed.

When a matter is allocated to the process, all parties are informed that the question of permission to appeal will be determined as a threshold issue. The appellant must file a short, written submission in support of the permission application but does not need to file a lengthy submission addressing the merits of the appeal. The respondent is not required to file any written submissions in response.

In 2016–17, the Commission heard 109 applications for permission to appeal. Of those, 81 per cent were refused, as shown in Table 41.

Table 41: Appeals—permission to appeal outcomes

Outcome	No. of matters			Percentage of matters		
	2016–17	2015–16	2014–15 ¹	2016–17	2015–16	2014–15 ¹
Permission not granted	80	107	52	73	78.1	74
Permission granted	29	26	18	27	18.9	26
Total	109	137	70¹	100	96.9²	100

¹ The 2014–15 data is for six months only, from 1 January 2015 to 30 June 2015.

² Four matters were still pending at the time of compilation of the 2015–16 Annual Report.

DETERMINATIONS

In 2016–17, Full Benches of the Commission determined a total of 195 appeal matters, including permission to appeal matters shown in Table 42. This represents a 27 per cent decrease compared with the previous year. Of those appeals finalised in 2016–17, 32 per cent were upheld, as shown in Table 42. This is consistent with the previous year, when 29 per cent of appeals were upheld.

As with previous years, unfair dismissals accounted for the largest number of appeals in 2016–17 (making up 52 per cent of all appeals lodged in 2016–17). This reflects the fact that unfair dismissals are the largest category of application lodged each year. Of the 102 matters that were heard (including permission to appeal matters), only 15 per cent of unfair dismissal appeals were upheld. While the Commission heard fewer appeals concerning agreement approvals in 2016–17 than in the previous year, 73 per cent of the 22 appeals were upheld (compared with 46 per cent of such appeals in 2015–16).

Table 42: Appeals—Commission decisions

Matter type	Appeals upheld			Appeals dismissed			Total appeal decisions		
	2016–17	2015–16	2014–15	2016–17	2015–16	2014–15	2016–17	2015–16	2014–15
Unfair dismissals	15	29	32	87	110	102	102	139	134
General protections	1	2	0	12	10	0	13	12	0
Agreement approvals	16	18	8	6	21	11	22	39	19
s.739 disputes	14	14	11	16	29	22	30	43	33
Industrial action	3	6	1	1	2	5	4	8	6
Modern awards	0	0	1	0	0	0	0	0	1
Bargaining disputes	4	3	3	2	8	5	6	11	8
Right of entry	1	3	4	3	5	5	4	8	9
Anti-bullying	1	0	0	1	4	0	2	4	0
Miscellaneous	7	3	6	5	1	18	12	4	24
Total	62	78	66	133	190	168	195	268	234

JUDICIAL REVIEWS

Parties who do not agree with the outcome of a matter heard and determined by the Commission may be able to seek a judicial review of the decision.

In 2016–17, the Federal Court of Australia and High Court of Australia determined 15 matters on review from the Commission, a decrease from the total of 21 matters determined in 2015–16. Of the 2016–17 total, 12 matters were dismissed and three matters were upheld, as shown in Table 43. The proportion of matters upheld (20 per cent) was similar to the proportion in 2015–16.

Table 43: Appeals—judicial review decisions

Outcome	2016–17	2015–16
Upheld	3	4
Dismissed	12	17
Total	15	21

REGULATION OF REGISTERED ORGANISATIONS

The Registered Organisations Act regulates the finances, financial administration, rules, elections and conduct of officers of 110 federally registered trade unions and employer organisations. In total, registered organisations have more than 2 million members and control net assets worth almost \$2 billion, with a total comprehensive income of approximately \$90 million.

Until 1 May 2017, the General Manager exercised various statutory powers and functions concerning registered organisations, including the regulation of their finances and financial administration and the conduct of elections. On 1 May 2017, the Registered Organisations Commission commenced and the majority of those powers and functions were transferred to the ROC.

Table 44 sets out the functions that remain with the Tribunal or General Manager and the functions that were transferred to the ROC.

Table 44: Registered organisations—division of responsibilities from 1 May 2017

Fair Work Commission	Registered Organisations Commission
Registration of organisations	Arrangement of elections
Amalgamation of organisations	Financial reporting
Deregistration of organisations	Loans, grants and donations statements
Rules, including eligibility rules of organisations	Inquiries and investigations
	Civil penalty proceedings
	Governance training

For functions that were transferred to the ROC on 1 May 2017, the information presented in this annual report covers the period from 1 July 2016 to 30 April 2017. Functions that remained with either the Tribunal or the General Manager are covered for the full 2016–17 reporting period.

ROYAL COMMISSION INTO TRADE UNION GOVERNANCE AND CORRUPTION

The Royal Commission into Trade Union Governance and Corruption (TURC), which delivered its final report in December 2015, referred a large body of work to the General Manager. A total of 30 referrals concerned 16 current and former officials from eight federally registered unions, dealing with matters covering a 10-year period.

In 2016–17, Commission staff made significant progress in dealing with TURC referrals until 30 April 2017. Two referrals resulted in successful civil proceedings against two former secretaries of the Western Australian Branch of the Transport Workers' Union of Australia, who were found to have breached the Registered Organisations Act.

Civil proceedings were also commenced against the national office of the Transport Workers' Union of Australia, alleging a range of contraventions of the Registered Organisations Act. The Registered Organisations Commissioner, who is now the applicant in these proceedings, is continuing to litigate this matter.

Until 30 April 2017, the General Manager conducted formal investigations concerning 10 matters that were referred from TURC regarding the Victorian Branch of The Australian Workers' Union. These referrals were accompanied by more than 23,000 pages of supporting materials across a broad range of potential contraventions, including alleged failure to maintain proper records. The ROC is continuing this investigation.

The General Manager transferred another 13 TURC referrals to the ROC on 1 May 2017, of which 11 were being held in abeyance pending police investigations or criminal proceedings and two were subject to ongoing assessment when transferred.

The remaining four referrals were closed with no further action.

Table 45 summarises the status of the 30 TURC referrals at 30 April 2017.

Table 45: Registered organisations—status of referrals from the Royal Commission into Trade Union Governance and Corruption

Status	No. of matters
Determined by the Federal Court of Australia	2
Before the Federal Court of Australia ¹	1
Subject of formal investigation under s.331 of the Registered Organisations Act ¹	10 ²
In abeyance, pending police investigations or criminal proceedings ¹	11
Under ongoing assessment ¹	2
Closed with no further action	4

¹ Transferred to the Registered Organisations Commission on 1 May 2017.

² Ten referrals form the subject of one investigation.

INQUIRIES AND INVESTIGATIONS

Until 30 April 2017, the General Manager conducted inquiries and investigations concerning registered organisations under the Registered Organisations Act.

The General Manager conducted inquiries under s.330, which were commenced at her own initiative, and inquiries under s.336(1A). Under s.336(1A), the General Manager was required to conduct an inquiry where she had previously found non-compliance with the legislative framework comprising the Registered Organisations Act, the Fair Work (Registered Organisations) Regulations 2009, the General Manager's reporting guidelines and the organisation's registered rules relating to its finances or financial administration.

Until 30 April 2017, the General Manager also had the power to conduct investigations (including the power to compel production of evidence) under s.331, concerning compliance with the legislative framework.

INQUIRIES

At the commencement of 2016–17, the General Manager was conducting three inquiries under the Registered Organisations Act. All three inquiries were closed by 30 April 2017, with findings as follows:

- Australian Salaried Medical Officers Federation—this inquiry was conducted under s.336(1A) and found that the registered organisation was compliant.
- Australian Nursing and Midwifery Federation—this inquiry also was conducted under s.336(1A) and found that the registered organisation was compliant.
- New South Wales Branch of the Construction and General Division of the Construction, Forestry, Mining and Energy Union—this inquiry was conducted under s.330, after referral from the TURC, and concluded that no further action was required.

During 2016–17, the Commission commenced an inquiry into the Victorian Branch of the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, as a result of a referral from the TURC. The inquiry concluded that no further action was required and the matter was closed.

INVESTIGATIONS

At the commencement of 2016–17, the General Manager was conducting four investigations under s.331 of the Registered Organisations Act:

- Western Australian Branch of the Transport Workers' Union of Australia—this investigation, which was referred by TURC, concerned inappropriate use of funds by two former branch secretaries. The Federal Court of Australia imposed financial penalties against the two former branch secretaries for contravention of the Registered Organisations Act.
- South Australian/Tasmanian Branch of the Textile, Clothing and Footwear Union of Australia—this investigation concerned the alleged misuse of funds. The investigation has concluded, and its recommendations have been held over pending the outcome of legal proceedings by police. This matter was transferred to the ROC on 1 May 2017.
- Two other investigations found that there was insufficient evidence of alleged wrongdoing and the matters were closed.

In response to a TURC referral, in 2016–17 the General Manager commenced an investigation regarding alleged breaches of requirements to maintain proper records by the Victorian Branch of The Australian Workers' Union. The investigation also concerned the alleged failure of the former secretary to act with care and diligence. This investigation was transferred to the ROC on 1 May 2017.

Table 46 sets out the Commission's formal inquiries and investigations under the Registered Organisations Act until 30 April 2017.

Table 46: Registered organisations—inquiries and investigations

Matter type	Active at 1 July 2016	Initiated before 30 April 2017	Closed by 30 April 2017	Transferred to ROC on 1 May 2017
Registered Organisations Act ss.330 and 336(1A)—Inquiries	3	1	4	0
Registered Organisations Act s.331—Investigations	4	1	4	1

ORGANISATIONS PANEL MATTERS

The Commission's organisations panel deals with various types of applications made by registered organisations, including applications for registration, changes to eligibility rules, cancellation of registration and alterations to eligibility rules.

In 2016–17, the panel dealt with 36 matters under the Registered Organisations Act, as shown in Table 47, considerably more than in either in 2014–15 or 2015–16.

The spike in matters determined by the organisations panel in 2016–17 arose from applications by transitionally recognised associations (TRAs) for extension of their recognition, which accounted for almost half the matters determined.

A TRA is a state-registered employer association or union that has been transitionally recognised under Schedule 1 to the Registered Organisations Act. Transitional recognition permits a TRA to represent its members in the national workplace relations system even though it is not a registered organisation under the Registered Organisations Act.

Transitional recognition ended on 1 January 2017. Only TRAs that obtained an extension of time from the Commission can remain transitionally recognised after that date.

The number of matters finalised for all other matter types remained relatively consistent with previous years. While the number of changes to eligibility rules in 2016–17 was double the number in 2015–16, it was consistent with 2014–15.

Table 47: Registered organisations—matters finalised by the organisations panel

Matter type	2016–17	2015–16	2014–15
ROA s.137A—Orders about representation rights of organisations of employees	0	0	1
ROA s.151(1)—Membership agreement with state-registered union	0	0	1
ROA s.152(2)—Assets and liabilities agreement with state-registered union	0	1	0
ROA s.158(1)(a)—Change of name	1	1	1
ROA s.158(1)(b)—Changes to eligibility rules	12	6	11
ROA s.18(a)—Registration of association of employers	3	2	4
ROA s.18(b)—Registration of association of employees	1	0	3
ROA s.30—Cancellation of registration	2	3	5
ROA s.44(1)—Submission of amalgamation to ballot	0	0	0
ROA s.152(2)—General Manager directed to enter particulars	0	0	0
ROA Sch.1, Cl.6(2)—Extension of transitional recognition	17	0	0
Total	36	13	26

ROA = *Fair Work (Registered Organisations) Act 2009*

The registered organisations panel also considers non-routine applications for right of entry permits under the Fair Work Act. Further information about permits is provided on page 111.

REGULATOR PERFORMANCE FRAMEWORK

The Commission measures its performance as a regulator against the six key performance indicators of the Australian Government's Regulator Performance Framework.

The Commission met all of the framework measures for the 10 months of 2016–17 during which the General Manager regulated registered organisations. The report will be published on our website by December 2017.

TIMELINESS

As Table 48 and Table 49 demonstrate, all timeliness targets were met or exceeded, representing a continuous improvement in our timeliness.

The timeliness of annual return assessments has improved steadily over three years, from 89 per cent of returns assessed within the target of 40 working days in 2014–15, to 100 per cent assessed within the target in 2016–17. The finalisation of elections has also improved, from 97 per cent within target in 2014–15 to 99 per cent within target in 2016–17.

For the past two reporting periods, 100 per cent of financial reports have been assessed within 40 working days.

The Commission met all of its timeliness benchmarks in relation to the regulation of registered organisations, both before the establishment of the ROC and subsequently.

Table 48: Registered organisations—timeliness, regulatory functions transferred to the Registered Organisations Commission

Performance targets	2016–17 ¹			2015–16			2014–15		
	No. lodged	No. within target	Percentage within target	No. lodged	No. within target	Percentage within target	No. lodged	No. within target	Percentage within target
95% of financial reports lodged under the Registered Organisations Act are assessed for compliance within 40 working days	330	330	100.0	391	391	100.0	392	377	96.2
95% of elections to be finalised within 40 working days	180	178	98.9	214	211	98.6	234	227	97.0
95% of annual returns to be assessed within 40 working days	105	105	100.0	113	109	96.5	101	90	89.1

¹ These results are for the 10-month period from 1 July 2016 to 30 April 2017; responsibility for these functions transferred to the Registered Organisations Commission on 1 May 2017.

Table 49: Registered organisations—timeliness, regulatory functions retained by the Tribunal and General Manager

Performance targets	2016–17			2015–16			2014–15		
	No. lodged	No. within target	Percentage within target	No. lodged	No. within target	Percentage within target	No. lodged	No. within target	Percentage within target
95% of routine entry permits to be finalised within 40 working days	1,498	1,492	99.6	1,549	1,543	99.6	1,468	1,407	95.8
95% of work health and safety permits to be finalised within 40 working days; 2014–15: 95% within 100 working days	40	40	100	46	42	91.3	47	43	91.5
95% of s.159 rule alterations to be assessed within 40 working days	97	96	99.0	99	95	96.0	101	79	78.2

PERMITS

The Commission exercises powers and functions concerning right of entry under the Fair Work Act and the *Work Health and Safety Act 2011* (WHS Act). This aspect of the Commission's role was not impacted by the changes to the Registered Organisations Act.

Part 3–4 of the Fair Work Act sets out the rights of officials of organisations who hold entry permits to enter premises for purposes related to representing their members. Division 6 of Part 3–4 empowers the Commission to issue right of entry permits, subject to certain considerations. The Commission must be satisfied that the proposed permit holder is a fit and proper person to hold a permit. This includes consideration of whether the proposed permit holder has received appropriate training.

A union official who holds a right of entry permit under the Fair Work Act can also apply for an entry permit under the WHS Act. The WHS Act allows permit holders to enter premises to inquire into suspected contraventions of the WHS Act and to consult and advise workers. Commission staff process permit applications under the Fair Work Act and the WHS Act, and permits are issued by senior Commission staff under delegation from the President.

Staff refer applications that are assessed as being ‘non-routine’ (meaning that it is uncertain whether the statutory requirements have been met) to the organisations panel for determination by a Commission Member. This provides applicants with an opportunity to present relevant evidence at a hearing.

In 2016–17, 1,521 permit applications were lodged, consistent with numbers the previous year, as shown in Table 50.

Of the 1,521 applications in 2016–17, 30 were assessed as being nonroutine and referred to the organisations panel. Of those, 25 were granted, three were granted with conditions and two were refused. One further permit was issued with conditions by the President’s delegate. Decisions concerning refusal to grant a permit under the Fair Work Act are published on the Commission’s website.

The Commission issued 1,468 permits in 2016–17, as shown in Table 50. The average number of days taken to issue a permit was 22, an increase of five days since the previous year.

A total of 62 applications were withdrawn for various reasons, most commonly after the applicant was informed that additional disclosure or further information was required.

Table 50: Registered organisations—permits finalised

	2016–17	2015–16	2014–15
Applications lodged	1,521	1,628	1,481
Fair Work Act permits issued	1,468	1,518	1,487
WHS Act permits issued	39	46	44
Fair Work Act permits refused	2	9	3
Fair Work Act applications withdrawn	62	63	65
Average time to issue (days)	22	17	17

Note: The number of permits issued and refused does not equal the number of applications received in the financial year because some applications are finalised outside the year in which they are received.

THE YEAR AHEAD

From 1 May 2017, staff from the Regulatory Compliance Branch who remained with the Commission transferred to the Registered Organisations Section in the Tribunal Services Branch.

Ongoing effective regulation of registered organisations requires the Commission and the ROC to work closely together across a range of matters while retaining their independence where appropriate. The Commission looks forward to maintaining strong links and open communication with the ROC as it fulfils its role as the primary regulator of registered organisations.

4

MANAGEMENT AND ACCOUNTABILITY

CORPORATE GOVERNANCE

EXTERNAL SCRUTINY

MANAGEMENT OF HUMAN RESOURCES

FINANCIAL MANAGEMENT

OTHER MANDATORY INFORMATION



CORPORATE GOVERNANCE

The General Manager is the statutory head of Australian Public Service (APS) staff employed by the Commission. The General Manager is responsible for assisting the President in ensuring that the Commission performs its functions and exercises its powers under the Fair Work Act. In addition, the General Manager has some functions concerning federally registered organisations under the Registered Organisations Act.

As the head of the Commission's administration, the General Manager is responsible for the Commission's performance, financial management and compliance with regulatory requirements under the PGPA Act and the Public Service Act.

EXECUTIVE

The General Manager is supported by the Executive team, which meets fortnightly to discuss planning and operational issues.

At 30 June 2017, the Executive comprised:

- General Manager—Bernadette O'Neill
- Director, Client Services—Louise Clarke
- Director, Corporate Services—Ailsa Carruthers
- Director, Tribunal Services—Murray Furlong.

The Director, Regulatory Compliance, Chris Enright, was also a member of the Executive until 30 April 2017. On 1 May 2017, Mr Enright (along with the majority of staff in the Regulatory Compliance Branch) transferred to the Fair Work Ombudsman under machinery of government changes as a result of the commencement of the ROC. Those staff who remained with the Commission after 30 April 2017 transferred to a new Registered Organisations Section of the Tribunal Services Branch.

The Executive is supported by the Senior Management Group, which is made up of senior team leaders across the country. A range of management, oversight and staff committees also support the Commission's operations.

MEMBER AND STAFF COMMITTEES

A number of committees constituted by Commission Members and senior staff are responsible for overseeing Commission activities.

RULES AND BENCHBOOKS

The Rules and Benchbooks Committee includes representatives from the Law Council, the Australian Chamber of Commerce and Industry, Ai Group, the Australian Council of Trade Unions and Job Watch. The committee's role is to consider changes to the Commission's rules and forms and to develop and maintain benchbooks and practice notes. By providing direct input from the perspective of the Commission's users, external stakeholders play a key role in the operation of this committee.

NEW APPROACHES

As well as overseeing the capability and development of Members and staff involved in delivering the New Approaches jurisdiction, the New Approaches Committee coordinates, oversees and reports on the Commission's New Approaches activities.

INTERNATIONAL

Members often share their expertise by engaging with dispute resolution agencies from various countries and with international agencies which impact on labour relations, such as the International Labour Organization (ILO).

The International Committee coordinates visits to the Commission by international delegations and, in collaboration with the ILO, assists emerging dispute resolution institutions by providing training and information sharing.

ACCESS, ENGAGEMENT AND COMMUNICATIONS

The Access, Engagement and Communications Committee oversees the Commission's engagement with external stakeholders and the community, including through the popular Workplace Relations Education Series of lectures, mock hearings and papers. As well as overseeing the production and maintenance of the Commission's information materials, the committee identifies and harnesses opportunities for broader engagement with the Australian community, including through Members' speaking engagements and participation in relevant forums.

FUTURE DIRECTIONS

The Future Directions Committee considers initiatives to improve fairness and access, efficiency and accountability. This includes monitoring developments in other courts and tribunals in order to identify ways to continuously improve performance across the Commission, and to develop strategies for particular stakeholder groups such as small businesses.

FRAUD MANAGEMENT

The Commission has a fraud control plan and conducts fraud risk assessments regularly, including when there is a substantial change in its structure, functions or activities. The fraud control plan establishes mechanisms for preventing, detecting, investigating and reporting on fraud and suspected fraud within the Commission.

FRAUD CONTROL CERTIFICATION

In accordance with s.10 of the Public Governance, Performance and Accountability Rule 2014, I hereby certify that I am satisfied that the Fair Work Commission:

- has prepared fraud risk assessments and fraud control plans
- has in place appropriate fraud prevention, detection, investigation and reporting mechanisms that meet the specific needs of the Commission
- has taken all reasonable measures to appropriately deal with fraud relating to the Commission.



Bernadette O'Neill
General Manager

21 September 2017

COMPLIANCE WITH THE FINANCE LAW

The Commission made no reports of significant non-compliance with the finance law as it relates to the Commission in 2016–17. Finance law includes the PGPA Act, including rules and instruments created under the PGPA Act, and any Appropriation Acts.

RISK MANAGEMENT

In 2016–17, the Commission continued to embed a contemporary risk management culture and practices across the organisation, in line with the risk management framework introduced by the PGPA Act.

As part of our commitment to improvement, the internal audit program for 2016–17 included a report to the General Manager concerning the Commission's governance. The scope of the review included assessment of obligations under Commonwealth legislative instruments (including the PGPA Act) and specific Department of Employment and portfolio requirements.

BUSINESS CONTINUITY

During 2016–17, the Commission undertook an internal audit of its business continuity and disaster recovery framework. The review evaluated the Commission’s business continuity capabilities and information technology disaster recovery program and identified opportunities to increase relevant capability.

AUDIT COMMITTEE

The Audit Committee provides independent assurance to the General Manager on the Commission’s financial and performance reporting responsibilities, risk oversight and management, systems of internal control, and internal audit.

The General Manager appoints Audit Committee members. Three of the four committee members are independent, satisfying the requirement that the majority of committee members must not be officials of the Commission.

During 2016–17, the Audit Committee met four times.

INTERNAL AUDIT

The internal audit program reflects the Commission’s purpose and identified risks and can cover any of the Commission’s financial and non-financial activities and performance, policies and procedures. The program is developed in consultation with the Executive and endorsed by the Audit Committee. Internal audit reports are provided to the General Manager and Executive and discussed at meetings of the Audit Committee.

In 2016–17, the Commission’s internal auditors were Ernst & Young. The following internal audits were undertaken during the year:

- Governance Framework Review
- Business Continuity and Disaster Recovery Review
- Data Analytics Review.

PROCUREMENT COMMITTEE

The Commission’s Procurement Committee is managed by the Manager, Reporting, Planning and Legal and includes two other Commission employees. It has a role in ensuring that procurements made by the Commission are consistent with the Commonwealth Procurement Rules and the Commission’s policies.

PLANNING

The Commission has a four-year corporate plan. Each year, the corporate plan is reassessed against operational and environmental factors, updated and published online by 31 August.

The intended results for the Commission in 2016–17, as set out in the corporate plan, were to ensure that:

- the community understands the role of the Commission and recognises it as an independent and expert workplace relations tribunal
- the Commission is accessible to all Australians, recognising the community's diverse needs and expectations
- the Commission is efficient, accountable and transparent
- the Commission is an effective and proactive regulator of registered organisations
- the Commission is a highly skilled and agile organisation in which its people, processes, systems and technology are aligned to deliver high-quality, efficient and effective services to the community.

The corporate plan is supported by business plans across all branches and aligned with individual staff performance plans. Reports assessing performance against business plans and the corporate plan are presented to the Executive each quarter.

PROJECTS

The Major Projects Control Committee, composed of the Executive and senior managers, is responsible for high-level strategic governance of major organisational and capital expenditure projects.

PERFORMANCE AND DEVELOPMENT FRAMEWORK

The Fair Work Australia Enterprise Agreement 2011–14 is supported by a performance and development framework. Every staff member employed by the Commission for at least three months is required to have an individual performance and development plan.

The framework provides strong links between individual performance and development and the organisation's goals.

The Commission has adopted the guiding principles set out by the Australian Public Service Commission to focus on meaningful conversations, with a view to enabling all employees to perform at their best and grow towards their work goals and career aspirations.

ETHICAL STANDARDS

The Commission's ethical standards are governed by a legislative framework common to non-corporate Commonwealth entities, including the PGPA Act, Public Service Act, Australian Public Service Commissioner's Directions 2016 and Public Service Regulations 1999.

VALUES

All Commission staff are expected to uphold and act in accordance with the APS Values of:

- impartial
- committed to service
- accountable
- respectful
- ethical.

The APS Values guide staff in their daily work and in their interactions with colleagues and the community. They are also embedded in the Commission's recruitment, induction and performance management processes.

CULTURAL PILLARS

In addition to the APS Values, the Commission has a particular focus on fostering:

- Innovation
- Collaboration
- Service excellence.

SERVICE CHARTER AND COMPLAINTS

The Commission's Service Charter, available on the Commission's website, outlines the nature and level of service the public can expect from Commission staff.

The website also provides information on how to make a complaint or to provide feedback on the Commission's administrative activities. The Commission relies on feedback and complaints received to inform potential service improvements and to identify service problems.

The Commission has a separate process for dealing with complaints about Members, in accordance with the provisions outlined in the Fair Work Act. Relevant information is available on the Commission's website.

During 2016–17, the Commission received 105 written complaints about our processes and practices. This is a decrease of 27 per cent from 144 complaints in 2015–16.

The Commission aims to respond to written complaints within 20 working days. The Commission responded to written complaints within an average of 16 days in 2016–17. A small number of complaints were highly complex and took significantly longer to resolve. Therefore, the median figure of nine days is more representative of the time taken to respond to complaints.

In 2016–17, the number of complaints about the Commission’s processes decreased, although they still represented a significant proportion of overall complaints. A substantial number of those complaints involved issues that were outside the jurisdiction or authority of the Commission’s administration. For example, issues included in complaints included disappointment relating to services provided by external representatives and the publication of particulars in decisions.

See Table 51 for the categories and numbers of written complaints received in 2016–17 and previous years.

Table 51: Written complaints

Type of content	2016–17	2015–16	2014–15	2013–14
Member conduct	4	8	10	8
Unfair dismissal conciliation ¹	32	30	18	20
General protections conciliation ²	3	N/A	N/A	N/A
Outcome of a matter ³	7	6	23	12
Timeliness	1	4	1	2
Administration ⁴	17	20	26	13
Pay and entitlements	0	0	2	1
Complaint relating to modern award or enterprise agreements ⁵	1	12	10	4
Adjournment request refusal	0	4	3	3
Process ⁶	37	45	59	24
Other ⁷	3	15	10	17
Total	105	144	162	104

1 Unfair dismissal conciliation includes conciliation processes and conciliator conduct.

2 A new category of complaints in 2016–17.

3 Complaints relating to the outcome of a matter include decisions of the Commission. These matters usually cannot be dealt with through the complaints process and require a formal appeal of the decision to be lodged.

4 Administration includes administrative errors, staff conduct, and errors with the website and lodgment system.

5 Complaints relating to the content of modern awards or enterprise agreements usually cannot be resolved through the complaints process and require a formal application to be lodged to amend or vary these instruments.

6 Process relates to either dissatisfaction with one of the Commission’s processes or a fundamental misunderstanding of the process or the authority of the Commission.

7 Other includes complaints about not being able to find documents on the Commission’s website.

EXTERNAL SCRUTINY

The Auditor-General issued an unqualified independent audit report on the Commission's 2016–17 financial statements. There were no other reports issued by the Auditor-General relating to the Commission in 2016–17.

There were no judicial decisions or decisions of administrative tribunals or the Australian Information Commissioner in 2016–17 that had, or may have had, a significant effect on the operation of the Commission. There were no reports on the operation of the Commission by a parliamentary committee or by the Commonwealth Ombudsman in 2016–17 and no agency capability reviews were released during the period.

In 2016–17, the Commission undertook corporate reporting through annual reports to meet prescribed reporting requirements, other external planning and reporting documents such as the portfolio budget statements, and responses to parliamentary questions.

The General Manager and other members of the Executive attended Senate Estimates hearings on 19 October 2016, 2 March 2017 and 30 May 2017. The President and Acting General Manager attended a spill-over hearing on 30 March 2017.

MANAGEMENT OF HUMAN RESOURCES

We are committed to investing in our people and ensuring that we have the right mix of skilled and experienced employees to deliver our services.

In 2016–17, we identified focus areas for workforce development, taking into account employee feedback obtained through the 2016 State of the Service employee census.

Census data confirmed that employees have a sense of personal accomplishment and pride in their job. The results also provided insights into the learning needs of our employees, and enabled us to focus on creating a highly engaged workplace through capability development.

Five key initiatives were implemented:

- a new learning management system, LearnHub, to improve access to learning opportunities for all employees
- focus groups to give all supervisors and managers an opportunity to discuss challenges and suggestions for improvement in employee engagement
- a supervisors' forum, held over three days, to build capability in all areas of people management
- training for managers and supervisors on managing difficult conversations, with a focus on performance management
- mandatory online training modules on disability awareness and Aboriginal and Torres Strait Islander cultural awareness, to improve our employees' understanding of other cultures and build a more inclusive and diverse culture.

STATISTICS

At 30 June 2017, the Commission employed a headcount of 285 staff (211 ongoing and 74 non-ongoing). This does not include Members of the Commission and is a decrease of 21 from the total number of ongoing and non-ongoing staff at 30 June 2016. The Commission did not have any casual employees at 30 June 2017. Tables 47 to 50 provide detailed staffing statistics for the past two reporting periods.

Table 52: Ongoing employees by employment status (headcount)

	30 June 2017			30 June 2016		
	Female	Male	Total	Female	Male	Total
Full time	107	64	171	135	82	217
Part time	35	5	40	30	4	34
Total	142	69	211	165	86	251

Note: At 30 June 2017 the Commission did not have any employees who identified as Aboriginal or Torres Strait Islander.

Table 53: Non-ongoing employees by employment status (headcount)

	30 June 2017			30 June 2016		
	Female	Male	Total	Female	Male	Total
Full time	49	24	73	38	16	54
Part time	1	0	1	1	0	1
Total	50	24	74	39	16	55

Table 54: Ongoing and non-ongoing employees by location (headcount)

	30 June 2017			30 June 2016		
	Female	Male	Total	Female	Male	Total
Victoria	121	63	184	129	71	200
New South Wales	29	16	45	32	21	53
Queensland	13	7	20	14	4	18
Western Australia	11	1	12	11	1	12
South Australia	8	4	12	9	3	12
Tasmania	3	0	3	3	0	3
Australian Capital Territory	5	2	7	4	2	6
Northern Territory	2	0	2	2	0	2
Total	192	93	285	204	102	306

Table 55: Ongoing and non-ongoing employees by substantive classification (headcount)

	30 June 2017			30 June 2016		
	Female	Male	Total	Female	Male	Total
APS Level 2	2	2	4	5	3	8
APS Level 3	6	0	6	7	0	7
APS Level 4	39	26	65	32	21	53
APS Level 5	48	19	67	41	15	56
APS Level 6	62	22	84	84	33	117
Executive Level 1 ¹	15	5	20	13	6	19
Executive Level 2 ¹	17	18	35	19	22	41
Senior Executive Service Band 1	2	1	3	2	2	4
General Manager	1	0	1	1	0	1
Total	192	93	285	204	102	306

¹ The Commission employs conciliators at Executive Levels 1 and 2 who have specialist skills and do not have managerial roles. The Commission employed 31 conciliators at 30 June 2016 and 36 conciliators at 30 June 2017.

DIVERSITY AND INCLUSION

The Commission is committed to building a culture of inclusion and diversity, including through developing strategies to increase those groups who are under-represented in our workforce.

The Commission is building on the 2013–15 workplace diversity strategy with the development of a 2017 strategy and implementation plan. The strategy will provide for an inclusive, respectful and diverse workforce, improving employee awareness of different cultures, developing the capability of groups identified in the strategy and developing recruitment and retention strategies so that the Commission's workforce better represents the community around us.

Groups identified in the strategy include:

- Aboriginal and Torres Strait Islander people
- people with disability
- people from culturally and linguistically diverse backgrounds
- people from the lesbian, gay, bisexual, transgender and intersex communities.

In 2016–17, the Commission's commitment to diversity and inclusion was demonstrated by:

- the launch of online training modules on disability awareness and Aboriginal and Torres Strait Islander cultural awareness
- the celebration of national days of significance of identified groups
- continued support for the Keeping in Touch program for employees on parental leave.

RECRUITMENT AND SEPARATIONS

During 2016–17, 64 new employees (ongoing or non-ongoing) commenced employment and 85 employees (ongoing or non-ongoing) departed the Commission.

CONDITIONS OF EMPLOYMENT

FAIR WORK AUSTRALIA ENTERPRISE AGREEMENT 2011–14

The Fair Work Australia Enterprise Agreement 2011–14 remained in force during the year while negotiations for a new enterprise agreement continued between staff and management bargaining representatives.

STAFF CONSULTATIVE COMMITTEE

The Staff Consultative Committee is established and maintained under the Commission's enterprise agreement. The committee, which is a well-established consultation and communication forum that considers matters affecting the workplace, includes:

- the General Manager
- management representatives
- employee representatives
- a union official.

FLEXIBLE WORK

The Commission provides flexible working arrangements to help employees balance work and other responsibilities, including:

- Part time work—at 30 June 2017, 40 ongoing employees and one non-ongoing employee (five male and 36 female) worked part time, six more than the number working part time at 30 June 2016.
- Home-based work—at 30 June 2017, two ongoing employees had a home-based work agreement to combine ongoing work commitments with parental responsibilities and/or personal circumstances. Three employees had home-based work arrangements at 30 June 2016.

COLLECTIVE AND INDIVIDUAL AGREEMENTS

All employees, excluding Senior Executive Service (SES) employees, are covered by the Fair Work Australia Enterprise Agreement 2011–14. At 30 June 2017, 281 employees were covered by the enterprise agreement, six of whom were also covered by individual flexibility arrangements.

At 30 June 2017, the Commission had three SES Band 1 employees. Employment conditions for SES employees are set out in individual determinations made under s.24(1) of the Public Service Act. The determinations are comprehensive documents covering each SES employee's terms and conditions, with many conditions being aligned with the Commission's enterprise agreement.

SALARY RANGES

Table 56 shows salary ranges available to APS employees by classification level. The maximum salary paid may be higher than represented in Table 56 for those employees who are covered by individual flexibility arrangements.

Table 56: Salary ranges by classification

	2016–17		2015–16	
	Minimum (\$)	Maximum (\$)	Minimum (\$)	Maximum (\$)
APS Level 2	52,284	57,529	52,284	57,529
APS Level 3	58,836	63,446	58,836	63,446
APS Level 4	65,508	71,089	65,508	71,089
APS Level 5	73,029	77,397	73,029	77,397
APS Level 6	79,094	90,983	79,094	90,983
Executive Level 1	100,688	108,694	100,688	108,694
Executive Level 2	116,094	135,869	116,094	135,869
SES Band 1	140,000 ¹	N/A ²	140,000 ¹	N/A ²

Note: The General Manager is not included in this table. The General Manager is an independent statutory office holder whose remuneration arrangements are determined by the Remuneration Tribunal.

1 The figures reflect base salary only and exclude superannuation and other benefits.

2 The General Manager determines the maximum salaries of all SES staff. By 31 July each year the Commission publishes on its website average annual remuneration paid to senior executives and other highly paid officials.

NON-SALARY BENEFITS

Non-salary benefits are available to employees through the Fair Work Australia Enterprise Agreement 2011–14, individual arrangements and other initiatives. They include:

- time off instead of payment for overtime worked
- where available through the local metropolitan public transport authority, access to annual train, tram and bus tickets—the Commission pays the up-front cost and the employee repays the amount fortnightly over a 12-month period
- healthy lifestyle initiatives such as subsidised yoga and Pilates classes, annual flu vaccinations and an employee assistance program.

PERFORMANCE PAY

The Commission does not provide performance pay.

LEARNING AND DEVELOPMENT

Individual professional development is directly linked to the Commission's performance and development framework and aims to create a more capable workforce to meet current and future needs.

The Commission continues to offer learning and development opportunities through a range of learning options, in line with the 70:20:10 model of learning and development which is widely used across the APS. Under this model, 70 per cent of learning is on the job or experience based; 20 per cent is relationship based or learning through other colleagues; and 10 per cent is formal learning or learning through structured courses and programs. Learning opportunities for staff include e-learning modules, support for formal study, short courses, attendance at conferences and coaching/mentoring opportunities.

The Commission's new learning management system, LearnHub, plays a pivotal role in developing the individual's knowledge of the APS through numerous Australian Public Service Commission modules. In 2016–17, the Commission designed, developed and delivered specialised e-learning modules relevant to business needs. LearnHub provides improved flexibility and access to learning opportunities and enables consistent reporting.

In 2016–17, the Commission spent \$266,927 (excluding GST) on learning and development for APS staff. This covered all staff training across the Commission, including studies assistance and core skills training in areas such as people management and leadership, administration, legislation, technology, project/program management and communication.

WORK HEALTH AND SAFETY

The Commission has work health and safety management arrangements consistent with the WHS Act.

The arrangements set out a statement of commitment, a workplace health and safety policy, consultation arrangements, agreed employer/employee responsibilities and work health and safety structures and arrangements. They also set out guidelines for workplace inspections, training and information and emergency procedures.

WORK HEALTH AND SAFETY COMMITTEE

The Commission has five work groups, 13 health and safety representatives and a national Work Health and Safety Committee. The committee met on three occasions in 2016–17.

INITIATIVES

In 2016–17, the Commission continued to promote work health and safety. During the year the most significant workplace health and safety initiatives were:

- ongoing quarterly reporting by managers, who provided details of workplace health and safety matters raised, implemented and/or resolved
- workstation assessments and, where needed, rehabilitation case management services, to meet the health, safety and rehabilitation needs of the workforce

- early intervention strategies, which included the provision of specialised equipment and advice to assist staff following injury
- the flu vaccination program, which was available to all staff
- healthy lifestyle initiatives, which included a walking challenge and yoga and Pilates programs at lunchtime
- R U OK? Day, which was part of a broader initiative promoting a more connected community
- regular campaigns encouraging staff to use the Commission's employee assistance program.

OUTCOMES

The Commission remains committed to maintaining and improving the health and wellbeing of its workforce and other parties. In 2016–17, there was one new compensation claim, and 24 accidents/incidents involving employees and other parties were reported, compared with 14 reported accidents/incidents in 2015–16. The increase in the number of reported accidents/incidents reflects measures in 2016–17 to raise awareness of work health and safety across all Commission offices.

The Commission closely monitors its compensation costs and internal rehabilitation programs against broader APS compensation costs and the increasing number of longer term injuries and more complex claims. The Commission's workers' compensation premium rate has been reduced to 0.33 per cent in 2017–18, well below the average rate of 1.23 per cent across all agencies in 2017–18.

REPORTABLE ACCIDENTS AND OCCURRENCES

Under s.38 of the WHS Act, the Commission is required to notify Comcare of any notifiable accidents or dangerous incidents arising out of work undertaken by any of its employees. The Commission had no reportable accidents or incidents in 2016–17.

INVESTIGATIONS

Under Part 4 of the WHS Act, the Commission is required to report any investigations conducted during the year into any of its undertakings. No investigations were conducted in 2016–17.

OTHER MATTERS

Under Part 5 of the WHS Act, health and safety representatives are entitled to issue provisional improvement notices to address immediate risks to improve health and safety performance. No notices were issued in 2016–17.

FINANCIAL MANAGEMENT

FINANCIAL PERFORMANCE

The Commission is a non-corporate entity under the PGPA Act. The Commission's audited financial statements for 2016–17 are at Appendix E: Financial statements.

The Commission's operating revenue from government for the 2016–17 financial year was \$78.099 million. The Commission received own-source revenue of \$2.901 million, primarily represented by subleasing rental income.

Operating expenses decreased in 2016–17 to \$84.807 million (\$88.202 million in 2015–16). The major expenses in 2016–17 were \$47.749 million in respect of employee expenses, \$32.095 million relating to supplier payments and \$4.947 million in asset depreciation, amortisation and related expenses.

In 2016–17 the Commission ran a funded surplus excluding depreciation and amortisation of \$1.140 million compared with a deficit in 2015–16 of \$211,000.

Performance against budget and comparison to the 2015–16 year is presented for both departmental and administered activities in the primary financial statements included at Appendix E: Financial statements. Commentary is also provided in the financial statements explaining major variances to budget.

A summary table of expenses and resources outcome including departmental appropriations and expenses can be found in Table 58, page 131. An agency resource statement table providing information about funding sources drawn upon by the Commission can be found in Table 57, page 130.

ASSET MANAGEMENT

The Commission's main asset types are leasehold improvements and computer equipment. As asset management is not considered to be a significant aspect of the Commission's strategic business, the effectiveness of the Commission's asset management processes is not reported.

PROCUREMENT

The Commission's approach to procuring goods and services, including consultancies, is consistent with, and reflects the principles of, the Commonwealth Procurement Rules. The rules are applied to activities through the Accountable Authority Instructions, supporting operational guidelines and the Commission's procurement framework.

CONSULTANTS

The Commission engages external consultants where the necessary specialised or professional skills are unavailable within the Commission or where there is a need for independent research or assessment.

The Commission's practices on the selection and engagement of consultants are in accordance with the PGPA Act and related regulations, including the Commonwealth Procurement Rules and relevant internal policies. The methods of selection used for consultancies include open tender, select tender, direct sourcing and panel arrangements (initially selected through either an open tender or select tender process).

During 2016–17, the Commission entered into one consultancy contract, but no expenditure was incurred. In addition, one consultancy contract was active during the period, involving total actual expenditure of \$92,680 (including GST).

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website, www.tenders.gov.au

AUSTRALIAN NATIONAL AUDIT OFFICE ACCESS CLAUSES

No contracts of \$100,000 or more (including GST) were let during 2016–17 that did not provide for the Auditor-General to have access to the contractor's premises.

EXEMPT CONTRACTS

No contracts or standing offers with a value of more than \$10,000 (including GST) were exempted by the General Manager from being published on AusTender on the basis that they would disclose exempt matters under the *Freedom of Information Act 1982*.

PROCUREMENT INITIATIVES TO SUPPORT SMALL BUSINESS

The Commission supports small business participation in the Commonwealth Government procurement market. Small and medium enterprise (SME) and small enterprise participation statistics are available on the Department of Finance's website at <http://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>

The Commission's procurement practices support SMEs, including by the use of the Commonwealth Contracting Suite for low-risk procurements valued under \$200,000. The Commission communicates using clear, simple language that is presented in an accessible format throughout the procurement process.

The Commonwealth's Indigenous Procurement Policy, which commenced on 1 July 2015, is reflected in our procurement policy and practices.

Procurement targets were allocated to portfolios, who then assigned targets to individual portfolio agencies. During 2016–17, the Commission awarded one contract to an Indigenous supplier, with a value of \$85,250.

Table 57: Fair Work Commission resource statement 2016–17

	Actual available appropriation for 2016–17 \$'000	Payments made 2016–17 \$'000	Balance remaining 2016–17 \$'000
	(a)	(b)	(a) – (b)
Ordinary annual services¹			
Departmental appropriation²	118,358	87,480	30,878
Total ordinary annual services	118,358	87,480	30,878
Departmental non-operating			
Equity injections³	150	-	150
Total departmental non-operating	150	-	150
Total available annual appropriations and payments	118,508	87,480	31,028
Total net resourcing and payments for Fair Work Commission	118,508	87,480	31,028

1 Appropriation Act (No. 1) 2016–17 and Appropriation Act (No. 3) 2016–17 and Supply Act (No. 1) 2016–17. This may also include prior-year departmental appropriation and s.74 retained revenue receipts.

2 Includes an amount of \$2.559 million in 2016–17 for the departmental capital budget. For accounting purposes, this amount has been designated as 'contributions by owners'.

3 Appropriation Act (No. 2) Non-operating– Equity Injection 2016–17.

Table 58: Fair Work Commission expenses by outcomes 2016–17

Expenses for outcome 1			
Outcome 1: Simple, fair and flexible workplace relations for employees and employers through the exercise of powers to set and vary minimum wages and modern awards, facilitate collective bargaining, approve agreements and deal with disputes.	Budget*	Actual expenses	Variation
	2016–17	2016–17	2016–17
	\$'000	\$'000	\$'000
	(a)	(b)	(a) – (b)
Program 1.1: Dispute resolution, minimum wages, orders and approval of agreements			
Departmental expenses			
Departmental appropriation ¹	78,499	79,805	(1,306)
Expenses not requiring appropriation in the budget year ²	2,927	5,002	(2,075)
Total for Program 1.1	81,426	84,807	(3,381)
Outcome 1 totals by appropriation type			
Departmental expenses			
Departmental appropriation ¹	78,499	79,805	(1,306)
Expenses not requiring appropriation in the budget year ²	2,927	5,002	(2,075)
Total expenses for Outcome 1	81,426	84,807	(3,381)
	2016–17	2016–17	
Average staffing level (number)	326	312	14

* Full-year budget, including any subsequent adjustment made to the 2016–17 budget at Additional Estimates.

1 Departmental appropriation combines ordinary annual services (Appropriation Act Nos 1 and 3 and Supply Act No. 1) and retained revenue receipts under section 74 of the *Public Governance, Performance and Accountability Act 2013*.

2 'Expenses not requiring appropriation in the Budget year' are made up of Depreciation Expenses, Amortisation Expense and Audit Fees.

OTHER MANDATORY INFORMATION

ADVERTISING CAMPAIGNS

During 2016–17, the Commission did not conduct any advertising campaigns.

The Commission is required to disclose payments to advertising, market research, polling, media advertising and direct mail organisations. Payments of \$13,000 or less (including GST) are excluded, consistent with s.311A of the *Commonwealth Electoral Act 1918*. The Commission did not make any payments above the threshold in 2016–17. During 2016–17, the Commission paid a total of \$10,848 (including GST) to a media advertising organisation for recruitment advertising, media releases and publication of information.

During 2016–17, however, the Commission did make payments above the 2015–16 threshold of \$12,700 (including GST) for advertising services received in 2015–16. See the note in Omissions and material errors, on page 133.

DISABILITY REPORTING MECHANISM

Since 1994, non-corporate Commonwealth entities have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's State of the Service reports and the *APS Statistical Bulletin*. These reports are available at www.apsc.gov.au. From 2010–11, entities have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010–2020, which sets out a 10-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high-level, two-yearly report will track progress against each of the six outcome areas of the strategy and present a picture of how people with disability are faring. The first of these progress reports was published in 2014 and can be found at www.dss.gov.au

INFORMATION PUBLICATION SCHEME

The Commission is subject to the *Freedom of Information Act 1982* (FOI Act) and is required to publish information to the public as part of the Information Publication Scheme (IPS). Under Part II of the FOI Act, the Commission must display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Commission's information publication plan is available at www.fwc.gov.au

GRANTS

The Commission did not administer any discretionary or other grant programs in 2016–17 and no discretionary or other grants were made.

ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PERFORMANCE

Australian Government agencies are required to report on their performance regarding the environment and ecologically sustainable development under s.516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

The Commission operates to ensure that energy resources are utilised as efficiently as practicable in the context of a working tribunal and that it maintains a healthy working environment for both staff and the public.

Programs are in place for the recycling of paper, packaging, batteries, equipment, toner and other materials, to reduce the Commission's carbon footprint.

Kitchens in a number of offices have separate bins to manage waste, including organic, recycling and general waste.

Sensor lighting is installed in hearing rooms, conference rooms, meeting rooms and offices. A timer mechanism automatically switches lighting off when rooms are not occupied. All showers continue to be fitted with energy-efficient T5 lighting and shower timers.

The Commission has continued to reduce its carbon footprint by utilising video conferencing as an alternative to travel.

The Commission ensures that new leases over a certain size have a green rating. The Commission actively encourages its landlords to increase their National Australian Built Environment Rating System rating, a national rating system that measures the environmental performance of Australian buildings, tenancies and homes.

The Commission's Melbourne office participated in Earth Hour 2017, a campaign to create awareness of global warming by encouraging people to adopt better energy conservation habits. On 25 March 2017, the Commission's Melbourne premises turned off all lights, appliances and desktop computers.

OMISSIONS AND MATERIAL ERRORS IN THE 2015–16 ANNUAL REPORT

TABLE 11, PAGE 40

Some numbers and percentages in Table 11 were not aligned with the correct payment ranges. The correct numbering is presented in Table 19 of this report.

TABLE 14, PAGE 44–45

The number of applications granted under the categories '40,000-maximum amount', 'No loss of wages' and 'Unknown' in 2015–16 were incorrect. The correct data is presented in Table 24 of this annual report.

TABLE 18, PAGE 51

The numbers under the categories 'Withdrawn before a conference' and 'Withdrawn before or after a conference or hearing to deal with extension of time' in 2015–16 were incorrect. The correct data is presented in Table 28 of this annual report.

TABLE 19, PAGE 52

The per cent of total disputes resolved under the 'Dispute resolved: monetary and non-monetary' category was incorrectly shown as 28 per cent. The figure should have been 38 per cent. The correct data is presented in Table 29 of this annual report.

TABLE 20, PAGE 52

The \$90,000–\$99,999 range was incorrectly duplicated.

ANTI-BULLYING, PAGE 61

In this section it was incorrectly reported that 52 anti-bullying applications were finalised with a decision in 2015–16. The figure should have been 57, as five granted applications were mistakenly omitted from the data set. The correct data is presented in Table 39 of this annual report.

TABLE 34, PAGE 75

The median number of days between lodgment of a dispute application and its resolution in 2015–16 was shown as 20 for 50 per cent of matters, and 47 for 90 per cent of matters. The figures should have been 16 and 42 respectively. The correct data is presented in Table 15 of this annual report.

TERMINATING OR SUSPENDING PROTECTED ACTION, PAGE 76

In this section it was incorrectly reported that the Commission received 14 applications to suspend or terminate protected industrial action. The figure should have been 15.

REGULATING REGISTERED ORGANISATIONS, PAGE 88

This section incorrectly referred to the 'Registered Organisations Act' instead of the 'Fair Work Act'. The online PDF and HTML versions of the annual report were amended to remove this incorrect reference to the Registered Organisations Act.

ADVERTISING CAMPAIGNS, PAGE 129

In this section, a payment made to Dentsu Mitchell Media Australia Pty Ltd for \$33,041 (including GST) for publication of information on the Road Safety Remuneration Tribunal's Contractor Driver Minimum Payments RSRO 2016 was inadvertently omitted. The Commission paid Dentsu Mitchell Media \$132,112 (including GST) for advertising services in 2015–16.

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APPENDICES

APPENDIX A: LIST OF MEMBERS

APPENDIX B: PANEL ASSIGNMENTS

APPENDIX C: MEMBERS' ACTIVITIES

APPENDIX D: TABLES AND FIGURES REFERENCE DATA

APPENDIX E: FINANCIAL STATEMENTS

APPENDIX F: SUBSCRIPTION SERVICES

APPENDIX G: LIST OF REQUIREMENTS



APPENDIX A: LIST OF MEMBERS

Table A1: Fair Work Commission Members at 30 June 2017

President	
Justice IJK Ross AO (M)	
Vice Presidents	
Vice President A Hatcher (S)	
Vice President J Catanzariti AM (S)	
Deputy Presidents	
Senior Deputy President JM Hamberger PSM (S)	Deputy President J Kovacic (C)
Deputy President RS Hamilton (M)	Deputy President GE Bull (P)
Deputy President PJ Sams AM (S)	Deputy President M Binet (P)
Deputy President A Booth (S)	Deputy President WR Clancy (M)
Deputy President IC Asbury (B)	Deputy President LE Dean (S)
Deputy President A Gooley (M)	Deputy President PC Anderson (A)
Deputy President VP Gostencnik (M)	Deputy President A Colman (M)
Commissioners	
Commissioner AL Cribb (M)	Commissioner S Booth (B)
Commissioner PJ Spencer (B)	Commissioner B Riordan (S)
Commissioner BD Williams (P)	Commissioner D Gregory (M)
Commissioner DS McKenna (S)	Commissioner LAT Johns OAM (S)
Commissioner IW Cambridge (S)	Commissioner NP Wilson (M)
Commissioner JF Ryan (M)	Commissioner T Saunders (S/N)
Commissioner PJ Hampton (A)	Commissioner T Cirkovic (M)
Commissioner J Roe (M)	Commissioner C Platt (A)
Commissioner MP Bissett (M)	Commissioner K Harper-Greenwell (M)
Commissioner CF Simpson (B)	Commissioner J Hunt (B)
Commissioner T Lee (M)	Commissioner SM McKinnon (M)

(A) = Adelaide, (B) = Brisbane, (C) = Canberra, (M) = Melbourne, (N) = Newcastle, (P) = Perth, (S) = Sydney

Table A2: Members of state tribunals who also held an appointment with the Commission, and members of expert panels, at 30 June 2017

Fair Work Commission title	State title / Expert panel
Deputy President PD Hannon (A)	President, SAIRC
Deputy President DJ Barclay (H)	President, TIC
Deputy President KM Bartel (A)	Deputy President, SAIRC
Deputy President NM Wells (H)	Deputy President, TIC
Commissioner P McMahon (A)	Commissioner, SAIRC
Mr A Cole	Expert panel member
Professor S Richardson	Expert panel member
Mr T Harcourt	Expert panel member
Mr A Apted	Expert panel member
Mr S Gibbs	Expert panel member

(A) = Adelaide, (H) = Hobart, SAIRC = South Australian Industrial Relations Commission, TIC = Tasmanian Industrial Commission

APPENDIX B: PANEL ASSIGNMENTS

PANEL HEADS



Justice Ross AO

Expert panel for annual wage reviews



Vice President Catanzariti AM

Major resources/infrastructure projects panel
Government and recreational services panel



Senior Deputy President Hamberger PSM

Transport, agriculture, mining and services industry panel
Organisations panel



Deputy President Gostencnik

Manufacturing and building industry panel



Deputy President Clancy

Termination of employment panel



Commissioner Hampton

Anti-bullying panel

For each of the Commission's eight panels, the following table sets out panel heads, Members allocated to the panel and a description of the panel's role or the industries assigned to the panel.

All panel matters in Western Australia are allocated by Deputy President Bull.

Commissioner Saunders, who is located in Newcastle, is available to all panels for matters in the Newcastle and Hunter regions.

Table B1: Fair Work Commission panel heads and assignments at 30 June 2017

President	
Justice Ross AO	
The President is responsible for allocating all panel assignments.	
Major resources/infrastructure projects panel	
Panel head	
Vice President Catanzariti AM	
Members	
Deputy President Sams AM	Commissioner Hampton
Deputy President Gooley	Commissioner Roe
Deputy President Binet	Commissioner Bissett
Commissioner Spencer	Commissioner Simpson
Commissioner Williams	
Description	
Through the major resources/infrastructure projects panel, the Commission engages with industrial parties involved in major projects.	
A major project is a project with a capital value of at least \$1 billion. However, projects of a particular regional significance may be allocated to the panel even though they have a capital value of less than \$1 billion.	
To date, five projects have been allocated to the following Members:	
Chevron Gorgon Gas Project	Vice President Catanzariti AM
INPEX Timor Sea Oil and Gas Project	Commissioner Simpson
Wheatstone Gas Project	Commissioner Williams
BHP Billiton Mitsubishi Alliance (BMA) projects	Commissioner Spencer
Barangaroo South Development Project	Deputy President Sams AM

Government and recreational services panel

Panel head

Vice President Catanzariti AM

Members

Vice President Hatcher¹
 Deputy President Hamilton
 Deputy President Kovacic
 Commissioner Cribb
 Commissioner Bissett
 Commissioner Simpson
 Commissioner Booth
 Commissioner Johns OAM
 Commissioner Wilson
 Commissioner Harper-Greenwell

Industries

Aged care industry
 Ambulance and patient transport
 Amusement, events and recreation industry
 Australian Capital Territory
 Broadcasting and recorded entertainment industry
 Children's services
 Christmas Island
 Cocos (Keeling) Islands
 Commonwealth employment
 Corrections and detentions
 Educational services
 Federal police operations
 Firefighting services
 Health and welfare services
 Indigenous organisations and services
 Local government administration
 Norfolk Island
 Northern Territory
 Racing industry
 Social, community, home care and disability services
 State and territory government administration
 Telecommunications services

Manufacturing and building industry panel

Panel head

Deputy President Gostencnik

Members

Industries

Vice President Hatcher ²	Building, metal and civil construction industries
Deputy President Gooley	Cement and concrete products
Deputy President Dean	Clothing industry
Commissioner McKenna	Electrical contracting industry
Commissioner Ryan	Food, beverages and tobacco manufacturing industry
Commissioner Riordan	Manufacturing and associated industries
Commissioner Cirkovic	Pharmaceutical industry
Commissioner Hunt	Plumbing industry
Commissioner McKinnon	Rubber, plastic and cable making industry
	Textile industry
	Timber and paper products industry
	Vehicle industry

Transport, agriculture, mining and services industry panel

Panel head

Senior Deputy President Hamberger PSM

Members

Industries

Vice President Hatcher ¹	Agriculture industry
Deputy President Sams AM	Airline operations
Deputy President Booth	Airport operations
Deputy President Asbury	All other industries (as listed below)
Deputy President Bull	Aluminium industry
Deputy President Clancy	Banking, finance and insurance industry
Deputy President Colman	Cleaning services
Commissioner Spencer	Clerical industry
Commissioner Cambridge	Coal export terminals
Commissioner Roe	Coal industry
Commissioner Lee	
Commissioner Gregory	

Transport, agriculture, mining and services industry panel *continued*

Members

Industries

Commercial sales
Dredging industry
Electrical power industry
Graphic arts
Hospitality industry
Licensed and registered clubs
Maritime industry
Meat industry
Mining industry
Miscellaneous
Oil and gas industry
Passenger vehicle transport (non-rail) industry
Port authorities
Postal services
Poultry processing
Quarrying industry
Rail industry
Retail industry
Road transport industry
Security services
Stevedoring industry
Storage services
Sugar industry
Tasmania
Waste management industry
Water, sewerage and drainage services
Wine industry

Transport, agriculture, mining and services industry panel *continued*

Industries included in 'All other industries' category

Animal care and veterinary services	Marine tourism and charter vessels
Aquaculture	Market and business consultancy services
Asphalt industry	Nursery industry
Building services	Pet food manufacturing
Business equipment industry	Pharmacy operations
Cemetery operations	Publishing industry
Contract call centre industry	Real estate industry
Diving services	Restaurants
Dry cleaning and laundry services	Salt industry
Fast food industry	Scientific services
Funeral directing services	Seafood processing
Gardening services	Sporting organisations
Grain handling industry	Technical services
Hair and beauty	Tourism industry
Journalism	Uranium mining (including construction)
Live performance industry	Wool storage, sampling and testing industry
Mannequins and modelling	

Termination of employment panel

Panel head

Deputy President Clancy

Panel deputy

Commissioner Bissett

Description

Most Members of the Commission deal with termination of employment applications under arrangements administered by the termination of employment panel head.

Anti-bullying panel

Panel head

Commissioner Hampton

Description

This panel has responsibility for anti-bullying matters, which are dealt with by Members of the Commission under arrangements administered by the anti-bullying panel head.

Organisations panel

Panel head

Senior Deputy President Hamberger PSM

Panel deputy

Deputy President Gostencnik

Members

Vice President Hatcher

Deputy President Binet

Description

This panel has responsibility for matters relating to registered organisations.

Expert panel for annual wage reviews

Panel head

Justice Ross AO

Members

Vice President Hatcher

Mr A Cole

Deputy President Asbury

Professor S Richardson

Commissioner Hampton

Mr S Gibbs

Description

The Fair Work Act provides for an annual wage review conducted by an expert panel each year.

The expert panel comprises the President, three other full time Members (appointed by the President each year) and three part time Members.

1 Vice President Hatcher is allocated to this panel to hear more complex matters.

2 Vice President Hatcher is allocated to this panel to deal with steel industry and more complex matters.

APPENDIX C: MEMBERS' ACTIVITIES

ACTIVITIES OUTSIDE THE COMMISSION

A number of Commission Members hold appointments and positions in addition to their appointments to the Commission.

Justice Ross is a Judge of the Federal Court of Australia and an Adjunct Professor, Discipline of Work and Organisational Studies at The University of Sydney Business School.

Vice President Catanzariti is Chair of The College of Law; an Adjunct Associate Professor, Discipline of Work and Organisational Studies at the University of Sydney Business School; and a Visiting Professorial Fellow of the School of Law and Faculty of Law, University of New South Wales.

Senior Deputy President Hamberger is Chair of the Pharmaceutical Benefits Remuneration Tribunal; a member of the Committee of the Industrial Relations Society of New South Wales; and an Honorary Research Fellow, Faculty of Law, University of Sydney.

Deputy President Sams is Co-convenor of Advocacy in the Industrial Relations Tribunals course, run in conjunction with the University of Technology Sydney Centre for Management and Organisation Studies and the Industrial Relations Society of New South Wales.

Deputy President Booth is a member of the Advisory Board to the Discipline of Work and Organisational Studies at the University of Sydney Business School.

Deputy President Asbury is the Chairperson of the Northern Territory Police Arbitral Tribunal and President of the Defence Force Remuneration Tribunal.

Deputy President Binet is the Vice President of the Industrial Relations Society of Western Australia; the Asia Representative on the World Governing Committee of the International Labour and Employment Relations Association; and a member of the Australian Association of Women Judges.

Deputy President Clancy is an honorary, non-executive director of the Sisters of St Joseph Health Care Services (Victoria).

Deputy President Dean is a member of the Law Society of New South Wales and a member of the Resolution Institute.

Commissioner Cribb is President of the Industrial Relations Society of Victoria.

Commissioner Spencer is Chairperson of the Northern Territory Correctional Officers Arbitral Tribunal and Deputy Chairperson of the Northern Territory Police Arbitral Tribunal.

Commissioner Hampton is a member of the Australian Labour and Employment Relations Association; the Australian Labour and Employment Relations Association (South Australia); the Australian Labour Law Association; the Council of Australasian Tribunals (South Australia); the International Association on Workplace Bullying and Harassment; and Resolution Australia.

Commissioner Lee is a member of the Tasmanian Industrial Commission.

Commissioner Johns is Chairman of the Australian Ballet School; a member of the Law Advisory Board, Deakin University School of Law; and an executive member of the Industrial Relations Society of New South Wales.

Commissioner Wilson is a member of the Tasmanian Industrial Commission.

Commissioner Saunders is a committee member of the Industrial Relations Society of New South Wales (Newcastle branch); and a member of the Industry Advisory Committee, Employment Relations and Human Resource Management Disciplinary Group, University of Newcastle.

Commissioner Cirkovic is a member of the Industrial Relations Society of Victoria and the Australian Association of Women Judges.

Commissioner Platt is a member of the Industrial Relations Society of South Australia.

COMMISSION-RELATED ENGAGEMENTS IN 2016–17

Throughout the reporting period, Commission Members participated in a range of Commission-related engagement and professional development activities.

Justice Ross made presentations at the Australian Financial Review Retail Summit in September 2016; to Toll Group, with Deputy President Clancy, in December 2016; and at the Australian Industry Group – PIR Group conference in May 2017. Also in May 2017, Justice Ross gave the discussant's comments at the Isaac Industrial Relations Symposium.

Deputy President Sams participated in two Advocacy in the Industrial Relations Tribunals courses, run in conjunction with the University of Technology Sydney Business School and the Industrial Relations Society of New South Wales.

Deputy President Booth gave presentations at the Queensland Hotels Association Employment Relations Conference in July 2016; workshops and conferences for the industrial relations societies of New South Wales, Victoria and Western Australia, in September and October 2016; the Television Education Network Industrial Relations Conference in October 2016; the Australian Hotels Association NSW Legal and Industrial Conference in November 2016; the Maritime Industry Australia Ltd SEA17 Conference in March 2017; and the Commission's Workplace Relations Education Series lecture in May 2017.

Deputy President Asbury participated in the Queensland Law Society's Specialist Accreditation program, and attended the Queensland Hotels Association Employment Relations Conference in August 2016, the Akolade Workplace Law Fundamentals seminar in March 2017, and the 2017 Employment Law Forum in April 2017.

Deputy President Binet participated in the Industrial Relations Society of Western Australia's Advocacy course in August 2016, the New Approaches Workshop in September 2016, and the Women in IR Breakfast in October 2016. She facilitated a mock unfair dismissal scenario with members of the Western Australian Local Government Association in September 2016, and spoke to the Unions WA annual conference in November 2016 and the Law Society of Western Australia in March 2017. She also made presentations to Business School students at Curtin University and facilitated discussions with human resources managers about workplace bullying and difficult conversations.

Commissioner Cribb spoke at the Australian Government Solicitor Employment Law Forum 2016 in Canberra in October 2016.

Commissioner Hampton gave presentations at the Fair Work Ombudsman, the Melbourne Law School and the Australian Labour Law Association national conference in August 2016. In February 2017, he spoke to the South Australian Employment Tribunal and participated in a question and answer session for Benchmark TV. He also spoke at the Law Society of South Australia Employment Law Conference in March 2017 and the Australian Human Resources Institute in June 2017.

Commissioner Bissett gave a speech to local government representatives at a conference at Meerkin & Apel Lawyers in December 2016.

Commissioner Lee gave presentations to the Law Society of Tasmania industrial relations conference in September 2016 and the Council of Australasian Tribunals, Victoria, Twilight Seminar in December 2016.

Commissioner Johns gave a presentation to the School of Business, University of Sydney, in September 2016, and spoke at the Australian Labour Law Association national conference and the Bartlett Workplace training enterprise bargaining update in November 2016. He also delivered presentations at the Industrial Relations Society of New South Wales Professional Development Day in March 2017, at the University of Technology Sydney Business School and the IRSNSW conference in May 2017, and to WorkCover in June 2017.

In May 2017, Deputy President Dean attended the Leading Successful Change course at the INSEAD Business School in France.

APPENDIX D: TABLES AND FIGURES REFERENCE DATA

Table D1: Annual wage review—timeliness

Target	2016–17	2015–16	2014–15	2013–14
30 June	6 June 2017	31 May 2016	2 June 2015	4 June 2014

Table D2: Enterprise agreements—timeliness, finalisation

	2016–17	2015–16	2014–15	2013–14
Target: median time of 32 days	32	18	21	17
No. of matters	5,606	5,449	6,005	6,800

Table D3: Industrial action—timeliness, listings

	2016–17	2015–16	2014–15	2013–14
Target: median time of 3 days	3	3	3	2
No. of matters	263	401	382	498

Table D4: Total applications, hearings and conferences, and decisions and orders

Item	2016–17	2015–16	2014–15	2013–14
Applications lodged	33,071	34,215	34,152	37,066
Hearings and conferences held	15,804	16,683	19,922	19,620
Decisions and orders published	11,103	12,140	12,440	13,302

Table D5: Enterprise agreements—results

Period	Percentage approved without undertakings	Percentage approved with undertakings	Percentage withdrawn by applicant	Percentage not approved or application dismissed	Percentage of total applications approved
Jul–Dec13	74	20	4	2	94
Jan–Jun14	66	28	5	1	94
Jul–Dec14	65	27	6	2	92
Jan–Jun15	61	29	8	2	90
Jul–Dec15	61	28	10	1	89
Jan–Jun16	53	34	12	1	87
Jul–Dec16	59	31	10	<1	90
Jan–Jun17	39	43	17	1	82

Table D6: Hearings and conferences by Members

Venue	2016–17	2015–16	2014–15	2013–14
Adelaide	225	261	312	284
Brisbane	866	894	1,145	1,359
Canberra	120	117	124	214
Darwin	18	47	38	41
Hobart	47	70	103	70
Melbourne	2,080	2,228	3,479	3,653
Newcastle	0	95	154	230
Perth	618	683	627	727
Sydney	1,516	1,817	2,650	2,572
Wollongong	0	115	216	133
Other places	474	254	244	356
In chambers	5,543	5,662	5,690	6,028
Telephone	3,372	3,208	3,809	3,198
Video	925	1,232	1,331	755
Total	15,804	16,683	19,922	19,620

Table D7: Unfair dismissal—conciliation matters, size of employer

Number of employees ¹	Number of matters				Percentage of conciliations			
	2016–17	2015–16	2014–15	2013–14	2016–17	2015–16	2014–15	2013–14
1–14	2,184	2,000	2,059	2,006	19.6	18.4	18.5	18.3
15–99	3,100	3,065	3,152	3,020	27.8	28.3	28.3	27.5
>100	5,307	5,204	5,272	5,145	47.5	48.0	47.5	46.9
Unknown ¹	7	4	4	5	0.1	0.0	0.0	0.0
In dispute	563	577	638	796	5.0	5.3	5.7	7.3
Total	11,161	10,850	11,125	10,972	100	100	100	100

¹ Based on information provided by respondents.

Table D8: Applications lodged, by type of matter

Type of application	2016–17
Fair Work Act 2009	31,235
Rule 7 (FWC)—Directions on procedure	1
s.113(6)—Application for an order that terms of prior long service leave instrument are applicable	4
s.120—Application to vary redundancy pay for other employment or incapacity to pay	148
s.122—Transfer of employment situations that affect the obligation to pay redundancy pay	1
s.156—4 yearly review of modern awards	47
s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective	3
s.158—Application to vary or revoke a modern award	4
s.185—Application for approval of a greenfields agreement	177
s.185—Application for approval of a multi-enterprise agreement	47
s.185—Application for approval of a single-enterprise agreement	5,474
s.210—Application for approval of a variation of an enterprise agreement	206
s.217—Application to vary an agreement to remove an ambiguity or uncertainty	21
s.217A—Application to deal with a dispute about variations	5
s.222—Application for approval of a termination of an enterprise agreement	97
s.225—Application for termination of an enterprise agreement after its nominal expiry date	303
s.229—Application for a bargaining order	74
s.236—Application for a majority support determination	93
s.238—Application for a scope order	21
s.240—Application to deal with a bargaining dispute	194
s.248—Application for a single interest employer authorisation	13
s.251—Application for a variation of a single interest employer authorisation	3
s.252—Application to extend single interest employer authorisation	1
s.260—Application for consent low-paid workplace determination	1
s.260—Application for special low-paid workplace determination	1
s.266—Industrial action related workplace determination	3
s.285—Annual wage review	1

Type of application	2016–17
s.302—Application for an equal remuneration order	1
s.318—Application for an order relating to instruments covering new employer and transferring employees	70
s.318—Application for an order relating to instruments covering new employer and transferring employees in agreements	9
s.319—Application for an order re instruments covering new employer and non-transferring employees in agreements	3
s.319—Application for an order relating to instruments covering new employer and non-transferring employees	39
s.320—Application to vary a transferable instrument—agreement	3
s.365—Application to deal with contraventions involving dismissal	3,729
s.365—Application to deal with contraventions involving dismissal (consent arbitration)	23
s.372—Application to deal with other contravention disputes	828
s.394—Application for unfair dismissal remedy	14,135
s.418—Application for an order that industrial action by employees or employers stop etc.	43
s.423—Application to suspend or terminate protected industrial action—significant economic harm etc.	2
s.424—Application to suspend or terminate protected industrial action—endangering life etc.	8
s.425—Application to suspend protected industrial action, cooling off	6
s.437—Application for a protected action ballot order	537
s.447—Application for variation of protected action ballot order	7
s.448—Application for revocation of protected action ballot order	37
s.459—Application to extend the 30 day period in which industrial action is authorised by protected action ballot	150
s.472—Application for an order relating to certain partial work bans	4
s.483AA—Application for an order to access non-member records	37
s.505—Application to deal with a right of entry dispute	46
s.512—Application for a right of entry permit	1,521
s.516—Application to extend entry permit	3
s.519—Application for an exemption certificate	4
s.526—Application to deal with a dispute involving stand down	10
s.531—Application for an order where failure to notify or consult registered employee associations about dismissals	2
s.533—Application for an FWC Order	2

Type of application	2016–17
s.576(2)(aa)—Promoting cooperative and productive workplace relations and preventing disputes	16
s.576(2)(ca)—Proceeding referred to FWC for mediation	2
s.589—Application for procedural and interim decision	1
s.602—Application to correct obvious error(s) etc. in relation to FWC's decision	1
s.603—Application to vary or revoke a FWC decision	1
s.604—Appeal of decisions	237
s.739—Application to deal with a dispute	1,888
s.739—Application to deal with a dispute in relation to flexible working arrangements	52
s.768BA—Application for an order about coverage for transferring employees under a state instrument	2
s.768BB—Application for an order about coverage for employee organisations under a state instrument	1
s.773—Application to deal with an unlawful termination dispute	109
s.786—Application for an order re failure to notify or consult registered employee associations about terminations	1
s.789FC—Application for an order to stop bullying	722
Fair Work (Registered Organisations) Act 2009	1,243
Chapt. 11 Pt 4A RO Act—Protected Disclosure direct to FWC	2
Query—Compliance	25
Query—Registered Organisations	32
RO Act—Request for advice and assistance—FWC	17
Reg.20 RO regulations—Inspection of documents	15
Sch. 1, Cl. 6(2) RO Act—Application for an extension by a Transitionally Recognised Association	17
Sch. 2, Cl. 1 RO Act—Application for recognition of state registered association	11
s.13(1)(b) RO Act—Advice and assistance to organisations	101
s.137A RO Act—Orders about representation rights of organisations of employees	1
s.137F RO Act—Orders reflecting state representation orders	1
s.154C RO Act—Approved training	1
s.158(1) RO Act—Application for alteration of eligibility rules	11
s.158(1) RO Act—Application for change of name of organisation	1
s.158A RO Act—Application to GM for alteration of eligibility rules	14
s.159(1) RO Act—Notification of alterations of other rules	97

Type of application	2016–17
s.161 RO Act—Evidence of rules	2
s.18(a) RO Act—Application for registration by an association of employers	3
s.180 RO Act—Conscientious objection to membership of organisations	2
s.186(2)(a) RO Act—Application by the committee of management to revoke exemption to conduct own elections	2
s.189(1) RO Act—Notification of elections for office	112
s.189(1) RO Act—Notification of elections for office—casual vacancy or insufficient nominations	68
s.233(1) RO Act—Annual obligation to lodge information	105
s.237 RO Act—Loans, grants and donations statement	253
s.246(1) RO Act—Application for determination of reporting units	1
s.268 RO Act—Financial return	330
s.30(1)(a) RO Act—Application by organisation for cancellation of registration	2
s.330 RO Act—GM makes inquiries	1
s.331 RO Act—GM conducts investigation	1
s.349 RO Act—List of officers to be evidence	14
s.44(1) RO Act—Application for approval for submission of amalgamation to ballot	1
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	460
Sch. 3, Item 10—Application to vary transitional instrument to remove ambiguity—agreement	1
Sch. 3, Item 15—Application by agreement to terminate collective agreement-based transitional instrument	15
Sch. 3, Item 16—Application to terminate collective agreement-based transitional instrument	146
Sch. 3, Item 17—Application by agreement to terminate individual agreement-based transitional instrument	228
Sch. 3, Item 19—Declaration for unilateral termination with FWC approval to terminate individual agreement	37
Sch. 3A, Item 23—Termination by the FWC of Collective Division 2B state employment agreement	1
Sch. 3A, Item 24—Application by agreement to terminate individual Division 2B state employment agreement	31
Sch. 5, Item 9—Application for an order remedying reduction in take-home pay resulting from a modern award	1

Type of application	2016–17
Work Health and Safety Act 2011	39
s.131 WHS Act—Application for a work health and safety entry permit	39
Workplace Relations Act 1996	17
s.170LW—Pre-reform Act—Application for settlement of dispute (certified agreement)	11
s.709—Application to FWC to have a dispute resolution process conducted (Div 5)	6
Administrative	75
Request for a Board of Reference	75
Coal Mining Industry (Long Service Leave) Administration Act 1992	2
s.39D CMILSLA Act—FWC may deal with disputes relating to long service leave	2
Total	33,071

CMILSLA Act = *Coal Mining Industry (Long Service Leave) Administration Act 1992*, FWC = Fair Work Commission,
 GM = General Manager, RO Act = Fair Work (Registered Organisations) Act 2009, WHS = *Work Health and Safety Act 2011*

APPENDIX E: FINANCIAL STATEMENTS

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**FINANCIAL STATEMENTS
2016 - 17**

FAIR WORK COMMISSION



INDEPENDENT AUDITOR'S REPORT

To the Minister for Employment

Opinion

In my opinion, the financial statements of the Fair Work Commission for the year ended 30 June 2017:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Fair Work Commission as at 30 June 2017 and its financial performance and cash flows for the year then ended.

The financial statements of the Fair Work Commission, which I have audited, comprise the following statements as at 30 June 2017 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement;
- Notes to the financial statements, comprising a summary of significant accounting policies and other explanatory information.

Basis for Opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Fair Work Commission in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* to the extent that they are not in conflict with the *Auditor-General Act 1997* (the Code). I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Accountable Authority's Responsibility for the Financial Statements

The Accountable Authority of the Fair Work Commission is responsible under the *Public Governance, Performance and Accountability Act 2013* for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under that Act. The Accountable Authority is also responsible for such internal control as the Accountable Authority determines is necessary to enable the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Accountable Authority is responsible for assessing the Fair Work Commission's ability to continue as a going concern, taking into account whether the entity's operations will cease as a result of an administrative restructure or for any other reason. The Accountable Authority is also responsible for disclosing matters related to going concern as applicable and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

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Auditor's Responsibilities for the Audit of the Financial Statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Peter Kerr
Executive Director
Delegate of the Auditor-General

Canberra
5 September 2017

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FAIR WORK COMMISSION**STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER**

In our opinion, the attached financial statements for the year ended 30 June 2017 comply with subsection 42(2) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Fair Work Commission will be able to pay its debts as and when they fall due.

Signed



Bernadette O'Neill
Accountable Authority
5 September 2017

Signed



Jack Lambalk
Chief Financial Officer
5 September 2017

Statement of Comprehensive Income
for the period ended 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Employee benefits	1.1A	47,749	51,821	49,649
Suppliers	1.1B	32,095	30,804	28,948
Depreciation and amortisation	3.2A	4,947	5,569	2,829
Write down and impairment of assets		12	3	-
Other expenses		4	5	-
Total expenses		84,807	88,202	81,426
Own-Source Income				
Own-source revenue				
Sale of goods and rendering of services	1.2A	409	343	-
Rental income	1.2B	2,409	2,437	2,429
Other revenue	1.2C	83	88	98
Total own-source revenue		2,901	2,868	2,527
Gains				
Other gains		-	4	-
Total gains		-	4	-
Total own-source income		2,901	2,872	2,527
Net (cost of)/contribution by services		(81,906)	(85,330)	(78,899)
Revenue from Government	1.2D	78,099	79,550	76,070
Surplus / (Deficit) on continuing operations		(3,807)	(5,780)	(2,829)
OTHER COMPREHENSIVE INCOME				
Items not subject to subsequent reclassification to net cost of services				
Changes in asset revaluation surplus	3.2A	12,148	-	-
Total comprehensive income		8,341	(5,780)	(2,829)

The above statement should be read in conjunction with the accompanying notes.

Budget Variances Commentary**Statement of Comprehensive Income for Fair Work Commission****Employee benefits**

Employee benefits were lower than expected during the 2016-17 financial year due to the retirement of Members who were not immediately replaced and the transfer of staff to the Fair Work Ombudsman, as a result of establishment of the Registered Organisations Commission, on 1 May 2017.

Suppliers

Supplier expenses were higher than budgeted due to an increase in legal fees and agency labour to support the investigation of matters arising from the Royal Commission into Trade Union Governance and Corruption.

Depreciation and amortisation

The depreciation and amortisation expenses were higher than budgeted due to lower than budgeted useful life estimates.

Revenue from Government

Revenue from Government was higher than budgeted due to additional resourcing provided at Mid-Year Economic and Fiscal Outlook (MYEFO). At MYEFO, full year ongoing funding was provided to support the cost of four Fair Work Commissioners. Further additional funding was provided to support the investigation of matters arising from the Royal Commission into Trade Union Governance and Corruption.

Changes in asset revaluation surplus

The Fair Work Commission conducted an independent valuation of non-financial assets in the 2016-17 financial year. Two significant long-term leasehold commitments were entered into during the financial year, resulting in assets being revalued and the useful lives estimate of the assets extended.

Statement of Financial Position
as at 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents	3.1A	1	789	593
Trade and other receivables	3.1B	31,824	35,135	40,151
Total financial assets		31,825	35,924	40,744
Non-financial assets				
Leasehold improvements	3.2A	24,209	15,094	16,177
Property, plant and equipment	3.2A	4,628	5,468	3,673
Intangibles	3.2A	1,529	1,187	3,956
Other non-financial assets	3.2C	4,612	4,536	4,891
Total non-financial assets		34,978	26,285	28,697
Total assets		66,803	62,209	69,441
LIABILITIES				
Payables				
Suppliers	3.3A	1,426	1,843	951
Other payables	3.3B	4,872	6,217	7,448
Total payables		6,298	8,060	8,399
Provisions				
Employee provisions	6.1A	12,653	17,197	20,448
Other provisions	3.4A	89	89	93
Total provisions		12,742	17,286	20,541
Total liabilities		19,040	25,346	28,940
Net assets		47,763	36,863	40,501
EQUITY				
Contributed equity		43,538	40,979	48,764
Reserves		12,410	262	262
Retained surplus/(Accumulated deficit)		(8,185)	(4,378)	(8,525)
Total equity		47,763	36,863	40,501

The above statement should be read in conjunction with the accompanying notes.

Budget Variances Commentary**Statement of Financial Position for Fair Work Commission****Cash**

Cash was lower than budgeted due to timing of payments at the end of the financial year.

Trade and other receivables

Appropriations receivable was lower than budgeted due to the higher than expected payout of leave liabilities during the 2016-17 financial year.

Leasehold improvements

During the 2016-17 financial year, the Fair Work Commission engaged an independent valuer to ensure carrying value of assets did not differ materially from the assets' fair values as at the reporting date. The fair value of leasehold improvements increased due to two significant long-term lease commitments being entered into during the financial year.

Intangibles

The value of intangibles was lower than budgeted as a major project was delayed. The departmental capital budget allocated to this project has been transferred to the 2017-18 financial year.

Other payables

Other payables variance was due to the recognition of lease incentives and the timing of employee accruals at the end of the financial year.

Employee provisions

The reduction of employee provisions was largely due to the transfer of leave liabilities from the Commission to the Fair Work Ombudsman, and the payment of employee entitlements upon retirement of long serving Members and staff during the 2016-17 financial year.

Contributed equity

The opening balance of contributed equity was lower than budgeted.

Reserves

The Fair Work Commission conducted an independent valuation of non-financial assets in the 2016-17 financial year. Two significant long-term leasehold commitments were entered into during the financial year, resulting in assets being revalued and the useful lives estimate of the assets extended.

Statement of Changes in Equity
for the period ended 30 June 2017

	2017 \$'000	2016 \$'000	Original Budget \$'000
CONTRIBUTED EQUITY			
Opening balance	40,979	41,174	46,205
Transactions with owners			
Distributions to owners			
Returns on appropriation	-	(2,613)	-
Contributions by owners			
Equity injection	150	-	150
Departmental capital budget	2,409	2,418	2,409
Total transactions with owners	2,559	(195)	2,559
Closing balance as at 30 June	43,538	40,979	48,764
RETAINED EARNINGS			
Opening balance	(4,378)	1,402	(5,696)
Comprehensive income			
Surplus/(Deficit) for the period	(3,807)	(5,780)	(2,829)
Total comprehensive income	(3,807)	(5,780)	(2,829)
Closing balance as at 30 June	(8,185)	(4,378)	(8,525)
ASSET REVALUATION RESERVE			
Opening balance	262	262	262
Comprehensive income			
Other comprehensive income	12,148	-	-
Total comprehensive income	12,148	-	-
Closing balance as at 30 June	12,410	262	262

Statement of Changes in Equity
for the period ended 30 June 2017

	2017 \$'000	2016 \$'000	Original Budget \$'000
TOTAL EQUITY			
Opening balance	36,863	42,838	40,771
Comprehensive income			
Surplus/(Deficit) for the period	(3,807)	(5,780)	(2,829)
Other comprehensive income	12,148	-	-
Total comprehensive income	8,341	(5,780)	(2,829)
Transactions with owners			
Distributions to owners			
Returns on appropriation ¹	-	(2,613)	-
Contributions by owners			
Equity injection	150	-	150
Departmental capital budget	2,409	2,418	2,409
Total transactions with owners	2,559	(195)	2,559
Closing balance as at 30 June	47,763	36,863	40,501

1. An amount of \$2.613m was quarantined during the 2013-14 financial year and formally reduced on the 10 July 2015. A formal reduction of appropriation complying with the Finance Reporting Rule Orders had been made in the financial year 2015-16.

The above statement should be read in conjunction with the accompanying notes.

Accounting Policy

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budget (DCBs) are recognised directly in contributed equity in that year.

Budget Variances Commentary

Statement of Changes in Equity for Fair Work Commission

Other comprehensive income

Other comprehensive income increased mainly due to an increment in the value of leasehold improvements following an asset revaluation.

Cash Flow Statement*for the period ended 30 June 2017*

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
OPERATING ACTIVITIES				
Cash received				
Appropriations		81,287	85,043	77,070
Sale of goods and rendering of services		3,096	3,089	2,429
Net GST received		3,687	1,927	-
Total cash received		88,070	90,059	79,499
Cash used				
Employees		(52,369)	(54,650)	(49,649)
Suppliers		(37,620)	(33,841)	(28,850)
Total cash used		(89,989)	(88,491)	(78,499)
Net cash from/(used by) operating activities		(1,919)	1,568	1,000
INVESTING ACTIVITIES				
Cash used				
Purchase of leasehold improvements		(30)	(21)	(269)
Purchase of property, plant and equipment		(1,144)	(832)	(1,290)
Purchase of intangibles		(254)	(324)	(2,000)
Total cash used		(1,428)	(1,177)	(3,559)
Net cash from/(used by) investing activities		(1,428)	(1,177)	(3,559)
FINANCING ACTIVITIES				
Cash received				
Equity injection		150	-	150
Departmental capital budget		2,409	2,418	2,409
Total cash received		2,559	2,418	2,559
Cash used				
Returns on appropriations		-	(2,613)	-
Total cash used		-	(2,613)	-
Net cash from/(used by) financing activities		2,559	(195)	2,559
Net increase/(decrease) in cash held		(788)	196	-
Cash and cash equivalents at the beginning of the reporting period		789	593	593
Cash and cash equivalents at the end of the reporting	3.1A	1	789	593

The above statement should be read in conjunction with the accompanying notes.

Budget Variances Commentary**Cash Flow Statement for Fair Work Commission****Cash received - appropriations**

Cash received - Appropriations was higher than budgeted due to the pay out of leave liabilities during the 2016-17 financial year.

Purchase of intangibles

The purchase of intangibles was lower than budgeted as a major project was delayed. The departmental capital budget allocated to this project has been transferred to the 2017-18 financial year.

Administered Schedule of Comprehensive Income*for the period ended 30 June 2017*

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Income				
Revenue				
Non-taxation revenue				
Application fees received		1,168	1,171	578
Less refunds of application fees		(555)	(490)	-
Total non-taxation revenue	2.1A	613	681	578
Surplus/(Deficit)		613	681	578

The above schedule should be read in conjunction with the accompanying notes.

Administered Schedule of Assets and Liabilities*as at 30 June 2017*

As at 30 June 2017, there were no administered assets and liabilities (2016: nil).

Administered Reconciliation Schedule				
	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
Opening assets less liabilities as at 1 July		-	-	-
Net (cost of)/contribution by services				
Income		613	681	-
Other comprehensive income		-	-	-
Transfers (to)/from Australian Government				
Appropriation transfers from Official Public Account				
Annual appropriations				
Payments to entities other than corporate Commonwealth entities		555	490	-
Appropriation transfers to OPA				
Transfers to OPA		(1,168)	(1,171)	-
Closing assets less liabilities as at 30 June		-	-	-

The above schedules should be read in conjunction with the accompanying notes.

Accounting Policy

Administered Cash Transfers to and from the Official Public Account

Revenue collected by the Fair Work Commission for use by the Government rather than the Fair Work Commission is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Fair Work Commission on behalf of the Government and reported as such in the Schedule of Administered Cash Flows and in the Administered Reconciliation Schedule.

Administered Cash Flow Statement*for the period ended 30 June 2017*

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
OPERATING ACTIVITIES				
Cash received				
Application fees received		1,168	1,171	578
Total cash received		<u>1,168</u>	<u>1,171</u>	<u>578</u>
Cash used				
Refunds of application fees		(555)	(490)	-
Total cash used		<u>(555)</u>	<u>(490)</u>	<u>-</u>
Net cash from operating activities		<u>613</u>	<u>681</u>	<u>578</u>
Cash from Official Public Account				
Refunds of application fees		555	490	-
Total cash from official public account		<u>555</u>	<u>490</u>	<u>-</u>
Cash to Official Public Account				
Application fees received		(1,168)	(1,171)	(578)
Total cash to official public account		<u>(1,168)</u>	<u>(1,171)</u>	<u>(578)</u>
Cash and cash equivalents at the end of the reporting period		<u>-</u>	<u>-</u>	<u>-</u>

The above schedules should be read in conjunction with the accompanying notes.

Notes to the financial statements

Overview

The Basis of Preparation

The Financial Statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The Financial Statements have been prepared in accordance with:

- a) *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR) for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The Financial Statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

New Accounting Standards

All new/revised/amending standards and/or interpretations that were issued prior to the sign-off date and are applicable to the current reporting period did not have a material effect on the Fair Work Commission's financial statements.

Taxation

The Fair Work Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Except where otherwise stated, administered items are accounted for on the same basis and using the same polices as for departmental items, including the application of Australian Accounting Standards.

Events after the Reporting Period

Departmental

There were no significant events that had the potential to significantly affect the ongoing structure and financial activities of the Fair Work Commission.

Administered

There were no significant events that had the potential to significantly affect the ongoing structure and financial activities of the Fair Work Commission.

Financial Performance

This section analyses the financial performance of Fair Work Commission for the year ended 2017.

1.1 Expenses

	2017 \$'000	2016 \$'000
1.1A: Employee benefits		
Wages and salaries	37,965	39,786
Superannuation:		
Defined contribution plans	4,093	4,158
Defined benefit plans	1,776	1,817
Leave and other entitlements	2,945	4,523
Separation and redundancies	604	1,184
Other employee expenses	366	353
Total employee benefits	47,749	51,821
1.1B: Suppliers		
Goods and services supplied or rendered		
Court/member services	3,501	4,753
Information Communications Technology	3,509	3,031
Property expenses	3,134	3,512
Office expense	1,009	1,169
Contractors	7,648	5,114
Other	410	416
Total goods and services supplied or rendered	19,211	17,995
Goods supplied	928	1,099
Services rendered	18,283	16,896
Total goods and services supplied or rendered	19,211	17,995
Other suppliers		
Operating lease rentals in connection with Minimum lease payments	12,655	12,518
Workers compensation expenses	229	291
Total other suppliers	12,884	12,809
Total suppliers	32,095	30,804

Leasing commitments

The Fair Work Commission in its capacity as lessee has committed to lease agreements throughout Australia in each capital city. Lease payments are subject to increases in accordance with fixed amounts according to lease agreements or market rental reviews. The Fair Work Commission may exercise option clauses in accordance with the terms of the leases.

The leasing commitments also include non-cancellable operating leases such as vehicles and IT related leases.

	2017 \$'000	2016 \$'000
Commitments for minimum lease payment in relation to non-cancellable operating leases are payable as follows:		
Within 1 year	14,515	16,064
Between 1 to 5 years	51,711	32,309
More than 5 years	43,646	12,543
Total operating lease commitments	109,872	60,916

Accounting Policy

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

1.2 Own-Source Revenue and Gains

	2017 \$'000	2016 \$'000
Own-Source Revenue		
1.2A: Sale of Goods and Rendering of Services		
Rendering of services	409	343
Total sale of goods and rendering of services	409	343

Accounting Policy

Revenue from the sale of goods is recognised when:

- a) the risks and rewards of ownership have been transferred to the buyer;
- b) the entity retains no managerial involvement or effective control over the goods.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

1.2B: Rental Income

Operating lease		
Sublease of property	2,409	2,437
Total rental income	2,409	2,437

Subleasing rental income commitments

The Fair Work Commission in its capacity as lessor received rental income from subleasing part of the Sydney office and Level 9 Melbourne office during the 2016-17 financial year.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- a) the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- b) the probable economic benefits associated with the transaction will flow to the Fair Work Commission.

Commitments for subleasing rental income receivables are as follows:

Within 1 year	2,138	2,509
Between 1 to 5 years	8,364	8,298
More than 5 years	-	2,204
Total subleasing rental income commitments	10,502	13,011

	2017 \$'000	2016 \$'000
1.2C: Other Revenue		
Resources received free of charge		
Remuneration of auditors	55	59
Other - vehicle contributions	28	29
Total other revenue	83	88

Accounting Policy***Resources Received Free of Charge***

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

Gains**1.2D: Revenue from Government**

Appropriations		
Departmental appropriations	78,099	79,550
Total revenue from Government	78,099	79,550

Accounting Policy***Revenue from Government***

Amounts appropriated for departmental appropriations for the year adjusted for any formal additions and reductions are recognised as Revenue from Government when the Fair Work Commission gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

Income and Expenses Administered on Behalf of Government

This section analyses the activities that Fair Work Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

2.1 Administered – Income

	2017 \$'000	2016 \$'000
Revenue		
Non-Taxation Revenue		
2.1A: Fees		
Application fees received	1,168	1,171
Less: Refunds of application fees	<u>(555)</u>	<u>(490)</u>
Total fees	<u>613</u>	<u>681</u>

Accounting Policy

All administered revenues are revenues relating to ordinary activities performed by the Fair Work Commission on behalf of the Australian Government. As such, administered appropriations are not revenues of the Fair Work Commission. The Fair Work Commission oversees distribution or expenditure of the funds as directed.

The Fair Work Commission receives revenue from fees charged for lodgement of Unfair Dismissals applications, Anti-bullying applications, General Protections applications and Unlawful Termination applications. Administered revenue is recognised when the application fee is processed.

Financial Position

This section analyses the Fair Work Commission's assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and Relationships section.

3.1 Financial Assets

	2017 \$'000	2016 \$'000
3.1A: Cash and Cash Equivalents		
Cash on hand or on deposit	1	789
Total cash and cash equivalents	1	789

Accounting Policy

Cash is recognised at its nominal amount. Cash and cash equivalents includes:

- a) cash on hand;
- b) demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value; and
- c) cash in special accounts.

3.1B: Trade and Other Receivables

Goods and services receivables

Goods and services	147	33
Total goods and services receivables	147	33

Appropriations receivables

Appropriation receivable	31,027	34,215
Total appropriations receivables	31,027	34,215

Other receivables

GST receivable	650	887
Total other receivables	650	887
Total trade and other receivables (gross)	31,824	35,135

Less impairment allowance

	-	-
Total trade and other receivables (net)	31,824	35,135

Credit terms for goods and services are payment within 30 days (2016: 30 days).

Accounting Policy

Receivables

Trade receivables and other receivables that have fixed or determinable payments and that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment.

Financial assets are assessed for impairment at the end of each reporting period.

3.2 Non-Financial Assets

3.2A: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment and Intangibles

	Leasehold Improvements \$'000	Property, Plant and Equipment \$'000	Computer software ¹ \$'000	Total \$'000
As at 1 July 2016				
Gross book value	18,859	7,053	3,698	29,610
Accumulated amortisation and impairment	(3,765)	(1,585)	(2,511)	(7,861)
Total as at 1 July 2016	15,094	5,468	1,187	21,749
Additions				
Purchase	30	1,144	142	1,316
Internally developed	-	-	112	112
Revaluations and impairments recognised in other comprehensive income	11,806	342	-	12,148
Depreciation and amortisation	(2,721)	(1,880)	(346)	(4,947)
Other movement	-	(434)	434	-
Disposals	-	(12)	-	(12)
Total as at 30 June 2017	24,209	4,628	1,529	30,366
Total as at 30 June 2017 represented by				
Gross book value	24,209	4,628	4,630	33,467
Accumulated depreciation, amortisation and impairment	-	-	(3,101)	(3,101)
Total as at 30 June 2017	24,209	4,628	1,529	30,366

1. The carrying amount of computer software included \$359,124.01 purchased software and \$1,169,173.98 internally generated software.

No indicators of impairment were found for leasehold improvements, property, plant and equipment and computer software. No assets from leasehold improvements, property, plant and equipment and computer software are expected to be sold or disposed of within the next 12 months.

Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 7.4. On 30 June 2017, an independent valuer conducted the revaluations.

<p>Accounting Policy</p> <p>Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.</p> <p>Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.</p> <p><u>Asset Recognition Threshold</u></p> <p>Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).</p> <p>The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property lease taken up by the Fair Work Commission where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Fair Work Commission's leasehold improvements with a corresponding provision for the 'make good' recognised.</p> <p><u>Revaluations</u></p> <p>Following initial recognition at cost, property, plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.</p> <p>Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.</p> <p>Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.</p>	<p><u>Depreciation</u></p> <p>Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Fair Work Commission using, in all cases, the straight-line method of depreciation.</p> <p>Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.</p> <p>Depreciation rates applying to each class of depreciable asset are based on the following useful lives:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;">2017</th> <th style="text-align: center;">2016</th> </tr> </thead> <tbody> <tr> <td>Leasehold</td> <td style="text-align: center;">Lease term</td> <td style="text-align: center;">Lease term</td> </tr> <tr> <td>Improvements</td> <td></td> <td></td> </tr> <tr> <td>Plant and equipment</td> <td style="text-align: center;">3 to 10 years</td> <td style="text-align: center;">3 to 10 years</td> </tr> </tbody> </table> <p><u>Impairment</u></p> <p>All assets were assessed for impairment at 30 June 2017. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.</p> <p>The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Fair Work Commission were deprived of the asset, its value in use is taken to be its depreciated replacement cost.</p> <p><u>Derecognition</u></p> <p>An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.</p> <p><u>Intangibles</u></p> <p>The Fair Work Commission's intangibles comprise internally developed and purchased software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.</p> <p>Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Fair Work Commission's software are 3 to 10 years (2016: 3 to 10 years).</p> <p>All software assets were assessed for indications of impairment as at 30 June 2017.</p>		2017	2016	Leasehold	Lease term	Lease term	Improvements			Plant and equipment	3 to 10 years	3 to 10 years
	2017	2016											
Leasehold	Lease term	Lease term											
Improvements													
Plant and equipment	3 to 10 years	3 to 10 years											

3.2B: Prior Period Error

The 2015-16 depreciation rates applying to Leasehold improvements were reassessed during the reporting period and adjusted to reflect an increase of \$2.552 million in depreciation charges. The impact of the prior year adjustments is disclosed in the tables below.

	Published Financial Statements 2016 \$'000	Adjustment 2016 \$'000	Restated Actual 2016 \$'000
Statement of Comprehensive Income			
<i>for the period ended 30 June 2016</i>			
Expenses			
Depreciation and amortisation	3,017	2,552	5,569
Total expenses	85,650	2,552	88,202
Net cost of services	(82,778)	(2,552)	(85,330)
Surplus / (Deficit) attributable to the Australian Government	(3,228)	(2,552)	(5,780)
Statement of Financial Position			
<i>as at 30 June 2016</i>			
ASSETS			
Non-financial assets			
Leasehold improvements	17,646	(2,552)	15,094
Total non-financial assets	28,837	(2,552)	26,285
Total assets	64,761	(2,552)	62,209
Net assets	39,415	(2,552)	36,863
EQUITY			
Retained surplus/(Accumulated deficit)	(1,826)	(2,552)	(4,378)
Total equity	39,415	(2,552)	36,863
Statement of Changes in Equity			
<i>for the period ended 30 June 2016</i>			
RETAINED EARNINGS			
Comprehensive income			
Surplus/(Deficit) for the period	(3,228)	(2,552)	(5,780)
Total comprehensive income	(3,228)	(2,552)	(5,780)
Closing balance as at 30 June 2016	(1,826)	(2,552)	(4,378)
Reconciliation of the opening and closing balances of property, plant and equipment for 2016			
Depreciation and amortisation	(3,017)	(2,552)	(5,569)
Total as at 30 June 2016	24,301	(2,552)	21,749

	2017	2016
	\$'000	\$'000
3.2C: Other Non-Financial Assets		
Prepayments	2,119	1,694
Lease incentive	2,090	2,528
Lease receivables	403	314
Total other non-financial assets	4,612	4,536

No indicators of impairment were found for other non-financial assets.

3.3 Payables

	2017	2016
	\$'000	\$'000
3.3A: Suppliers		
Trade creditors and accruals	<u>1,426</u>	<u>1,843</u>
Total suppliers	<u>1,426</u>	<u>1,843</u>

Settlement terms for suppliers are 30 days.

3.3B: Other payables

Salaries and wages	344	408
Superannuation	29	20
Lease payable	2,591	3,280
Lease incentives	1,907	2,507
Income earned in advance	<u>1</u>	<u>2</u>
Total other payables	<u>4,872</u>	<u>6,217</u>

3.4 Other Provisions

3.4A: Other Provisions

	Provision for restoration \$'000	Total \$'000
As at 1 July 2016	89	89
Amount used	-	-
Amounts reversed	-	-
Total as at 30 June 2017	89	89

The Fair Work Commission has 1 (2016: 1) agreement for the leasing of premises which have provisions requiring the Fair Work Commission to restore the premises to their original condition at the conclusion of the lease. The Fair Work Commission has made a provision to reflect the present value of this obligation.

Assets and Liabilities Administered on Behalf of the Government

This section analyses assets used to conduct operations and the operating liabilities incurred as a result the Fair Work Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

4.1 Administered - Financial Assets

As at 30 June 2017, there were no administered financial assets and liabilities that required disclosure (2016: nil).

Funding This section identifies the Fair Work Commission funding structure.

5.1 Appropriations

5.1A: Annual Appropriations ('Recoverable GST exclusive')

Annual Appropriations for 2017

	Annual Appropriation ¹ \$'000	Adjustments to Appropriation ² \$'000	Total Appropriation \$'000	Appropriation applied in 2017 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	78,099	2,846	80,945	82,305	(1,360)
Capital Budget ⁴	2,409	-	2,409	1,542	867
Other services					
Equity Injections	150	-	150	-	150
Total departmental	80,658	2,846	83,504	83,847	(343)

1. Appropriations reduced under Appropriation Acts (Nos. 1, 3 & 5): sections 10, 11 and 12 and under Appropriation Acts (Nos. 2, 4 & 6): sections 12, 13 and 14. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.
2. PGPA Act Section 74 receipts.
3. The variance between total annual appropriation available and total appropriation applied in 2017 relates to payments funded from unspent prior year appropriation items.
4. Departmental Capital Budgets are appropriated through Appropriation Acts (Nos. 1, 3 & 5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

Annual Appropriations for 2016

	Annual Appropriation ¹ \$'000	Adjustments to Appropriation ² \$'000	Total Appropriation \$'000	Appropriation applied in 2016 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	79,550	2,809	82,359	86,564	(4,205)
Capital Budget ⁴	2,418	-	2,418	1,443	975
Total departmental	81,968	2,809	84,777	88,007	(3,230)

1. Appropriations reduced under Appropriation Acts (Nos. 1, 3 & 5): sections 10, 11 and 12 and under Appropriation Acts (Nos. 2, 4 & 6): sections 12, 13 and 14. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.
2. FGPA Act Section 74 receipts.
3. The variance between total annual appropriation available and total appropriation applied in 2016 relates to payments funded from unspent prior year appropriation items.
4. Departmental and Administered Capital Budgets are appropriated through Appropriation Acts (No.1, 3 & 5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

5.1B: Unspent Annual Appropriations ('Recoverable GST exclusive')

	2017 \$'000	2016 \$'000
Departmental		
Appropriation Act (No.1) 2015-16	-	32,644
Appropriation Act (No.1) 2016-17	7	-
Supply Act (No.1) 2016-17	23,388	-
Appropriation Act (No. 3) 2016-17	4,256	-
Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2015-16	818	2,360
Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2016-17	1,405	-
Supply Act (No.1) – Capital Budget (DCB) Non-operating 2016-17	1,004	-
Act (No.2) – Non-operating – Equity Injection(No.2) 2016-17	150	-
Total departmental	31,028	35,004

5.1C: Special Appropriations ('Recoverable GST exclusive')

Authority	Appropriation applied	
	2017 \$'000	2016 \$'000
<i>Public Governance, Performance and Accountability Act 2013 s.77, Administered</i>	(555)	(490)
Total special appropriations applied	(555)	(490)

5.1D: Disclosure by Agent in Relation to Annual and Special Appropriations ('Recoverable GST exclusive')

	Department of Finance – to make payment to beneficiaries under the Judges Pension Scheme 2017 \$'000
2017	
Total Receipts	6,850
Total Payments	(6,850)
	Department of Finance – to make payment to beneficiaries under the Judges Pension Scheme 2016 \$'000
2016	
Total Receipts	5,209
Total Payments	(5,209)

5.2 Net Cash Appropriation Arrangements

	2017 \$'000	2016 \$'000
Total comprehensive income/(loss) less depreciation/amortisation expenses previously funded through revenue appropriations	1,140	(211)
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(4,947)	(5,569)
Total comprehensive income/(loss) – as per the Statement of Comprehensive Income	(3,807)	(5,780)

People and relationships

This section describes a range of employment and post-employment benefits provided to our people and our relationships with other key people.

6.1 Employee Provisions

	2017	2016
	\$'000	\$'000
6.1A: Employee Provisions		
Leave	12,608	16,115
Separations and redundancies	45	1,082
Total employee provisions	12,653	17,197

6.1B: Administered – Employee Provisions

As at 30 June 2017, there were no administered employee provisions (2016: nil).

Accounting Policy

Liabilities for short-term employee benefits and termination benefits expected to be settled within twelve months of the end of reporting period are measured at their nominal amounts.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

Leave

The liability for employee benefits includes provision for annual leave, long service leave and Judges Long leave. Members of the Fair Work Commission, who were Presidential Members under the Workplace Relations Act 1996 and the President of the Fair Work Commission, accrue six months long leave after five years of service as a Presidential Member. In recognition of the nature of Presidential Members' tenure, a provision is accrued from the first year of service.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Fair Work Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by use of the Australian Government Actuary's shorthand method using the standard Commonwealth sector probability profile. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Fair Work Commission recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

The majority of staff and Members of the Fair Work Commission are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The Fair Work Commission makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Fair Work Commission accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June 2017 represents outstanding contributions for the final fortnight of the year.

Judge's Pension

Members of the Fair Work Commission who are Presidential Members under the *Workplace Relations Act 1996* and the President of the Fair Work Commission are eligible for pensions under the Judges' Pension Scheme (JPS) pursuant to the *Judges' Pensions Act 1968*. The JPS is an unfunded defined benefit scheme that is governed by the rules set out in the Act.

The Fair Work Commission does not contribute towards the cost of the benefit during such Member's term of service. Liability and expenses associated with the JPS are recorded as part of the Department of Finance financial statements. The Department of Finance has given the Fair Work Commission drawing rights for the financial year in relation to the special appropriation made under the *Judges' Pensions Act 1968*. The Fair Work Commission makes pension payments directly to beneficiaries of the scheme (refer to Note 5.1D).

6.2 Key Management Personnel Remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity. The Fair Work Commission has determined the key management personnel to be the Portfolio Minister, the General Manager and Senior Executive Service (SES). Key management personnel remuneration is reported in the table below:

	2017 \$'000	2016 \$'000
Short-term employee benefits	1,057	1,037
Post-employment benefits	142	140
Other long-term employee benefits	117	114
Total key management personnel remuneration expenses¹	1,316	1,291

The total numbers of key management personnel that are included in the above table are 5 (2016: 5).

1. The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the Fair Work Commission.

6.3 Related Party Disclosures

Related party relationships:

The entity is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and Executive.

Transactions with related parties:

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. These transactions have not been separately disclosed in this note.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed.

Managing uncertainties

This section analyses how the Fair Work Commission manages financial risks within its operating environment.

7.1A: Contingent Assets and Liabilities

Quantifiable Contingencies

As at 30 June 2017, there were no quantifiable contingent liabilities or assets requiring disclosure (2016: nil).

Unquantifiable Contingencies

As at 30 June 2017, there were no unquantifiable contingent liabilities or assets requiring disclosure (2016: nil).

Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

7.1B: Administered – Contingent Assets and Liabilities

As at 30 June 2017, there were no administered contingent assets or liabilities that required disclosure (2016: nil).

7.2: Financial Instruments

	2017 \$'000	2016 \$'000
7.2A: Categories of Financial Instruments		
Financial Assets		
Loans and receivables		
Cash and cash equivalents	1	789
Trade and other receivables	147	33
Total loans and receivables	148	822
Total financial assets	148	822
Financial Liabilities		
Financial liabilities measured at amortised cost		
Trade creditors and accruals	1,426	1,843
Total financial liabilities measured at amortised cost	1,426	1,843
Total financial liabilities	1,426	1,843

Accounting Policy**Financial assets**

The Fair Work Commission classifies its financial assets in the following categories:

- a) financial assets at fair value through profit or loss; and
- b) loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

Effective Interest Method

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting period.

Financial liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities.

Financial liabilities are recognised and derecognised upon 'trade date'.

Other Financial Liabilities

Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

7.3: Administered – Financial Instruments

As at 30 June 2017, there were no administered financial instruments that required disclosure (2016: nil).

7.4 Fair Value Measurement

Accounting Policy

The Fair Work Commission engaged Australian Valuation Solutions (AVS) to conduct a materiality review of all non-financial assets at 30 June 2017 and has relied upon those outcomes to establish carrying amounts. An annual assessment is undertaken to determine whether the carrying amount of the assets is materially different from the fair value. Comprehensive valuations are carried out at least once every three years. AVS has provided written assurance to the Fair Work Commission that the models developed are in compliance with AASB 13.

The methods utilised to determine and substantiate the unobservable inputs are derived and evaluated as follows:

Physical Depreciation and Obsolescence - Assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the Depreciated Replacement Cost approach. Under the Depreciated Replacement Cost approach the estimated cost to replace the asset is calculated and then adjusted to take into physical depreciation and obsolescence. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the asset under consideration. For all Leasehold Improvement assets, the consumed economic benefit/asset obsolescence deduction is determined based on the term of the associated lease.

The Fair Work Commission's policy is to recognise transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period.

7.4A: Fair Value Measurement

	Fair value measurements at the end of the reporting period	
	2017 \$'000	2016 \$'000
Non-financial assets ²		
Plant and Equipment ¹	3,257	3,561
Plant and Equipment ¹	1,371	1,896
Leasehold Improvements ¹	24,209	17,646
Work in Progress (Plant and Equipment) ¹	-	11
Total Non-financial assets	28,837	23,114

1. No non-financial assets were measured at fair value on a non-recurring basis as at 30 June 2017 (2016: nil). During 2016-17 the Fair Work Commission entered into long term leasing commitments for two major leaseholds. An independent valuation was conducted to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The value of leasehold improvements increased as the assets were assessed as being in good condition, and the useful lives estimate of the assets were extended.
2. The Fair Work Commission's assets are held for operational purposes and not held for the purposes of deriving a profit. The current use of all non-financial assets is considered their highest and best use.

7.5 Administered - Fair Value Measurement

As at 30 June 2017, there was no administered fair value measurement that required disclosure (2016: nil).

Other information

8.1: Restructuring

	2017	2016
	Registered Organisations Commission ¹	
	\$'000	\$'000
FUNCTIONS RELINQUISHED		
Assets relinquished		
Total assets relinquished	-	-
Liabilities relinquished		
Employees leave liabilities	(466)	-
Total liabilities relinquished	(466)	-
Net (liabilities) relinquished ²	(466)	-

1. The functions associated with the regulation of registered organisations were assumed from the Fair Work Commission on 1 May 2017 with the establishment of the Registered Organisations Commission.
2. The net liabilities transferred from the Fair Work Commission to the Fair Work Ombudsman and Registered Organisations Commission Entity were \$465,993.

The Registered Organisations Commission was established under the Fair Work (Registered Organisations) Amendment Act 2016 and assumed the investigation, enforcement, advice and assistance responsibilities in relation to registered organisations previously undertaken within the Fair Work Commission. Staff from the Commission's Regulatory Compliance branch was transferred from the Fair Work Commission to the Fair Work Ombudsman and Registered Organisations Commission Entity under a Machinery of Government change.

The Fair Work Commission retains its functions under the *Fair Work (Registered Organisations) Act 2009* concerning the registration, amalgamation and deregistration of registered organisations and the approval of their rules.

The costs incurred by the Fair Work Commission in carrying out the functions that were transferred for the financial year to 30 April 2017 was \$3.165 million.

APPENDIX F: SUBSCRIPTION SERVICES

The Commission offers a range of free electronic subscriptions to provide the public with updates about major developments at the Tribunal, including significant decisions; information about the various awards; and general updates through the FWC Bulletin.

Subscribers are notified by emails containing links to downloadable documents accessible through the website.

The subscription services have proven a valuable tool, enabling the Commission to engage with the public and ensure that interested parties are provided with accurate information on the areas relevant to them.

To subscribe to any of the services, members of the public may sign up on the **Subscribe to Updates** page on the Commission's website, then log in and select any services required. There is no cost, and publications and services can be added or removed at any time.

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If an entity entered into a contract with a value of more than \$10,000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	129
If an entity entered into a contract or there is a standing offer with a value greater than \$10,000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	129

Description	Ref
A statement that '[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SMEs) and Small Enterprise participation statistics are available on the Department of Finance's website.'	129
An outline of the ways in which the procurement practices of the entity support small and medium enterprises	129–30
A statement that '[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury's website.'	N/A
Inclusion of the annual financial statements in accordance with subsection 43(4) of the PGPA Act	156–201
A statement that 'During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity's website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance's website.'	N/A
If the entity did not conduct advertising campaigns, a statement to that effect	132
A statement that 'Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity's website].'	133
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GLOSSARY

Annual performance statements	Statements prepared by the accountable authority of a Commonwealth entity in accordance with s.39 of the PGPA Act that acquit a Commonwealth entity's actual performance against planned performance described in the entity's corporate plan.
Applicant	The party who lodged an application with the Commission.
Arbitration	A process in which the Commission determines a grievance or dispute by imposing a binding settlement. The Commission has powers of compulsory arbitration as well as offering arbitration by consent, where permitted by the Fair Work Act.
Conciliation	One of the informal processes used by the Commission to facilitate the resolution of a grievance or a dispute between parties by helping them to reach an agreement.
Constitutional corporation	Defined under the Fair Work Act as 'a corporation to which paragraph 51(xx) of the Constitution applies'. The Australian Constitution defines constitutional corporations as 'Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'.
Constitutionally-covered business	A person conducting a business or undertaking, conducted principally in a territory or Commonwealth place, or where the person conducting the business or undertaking is: <ul style="list-style-type: none"> ○ a constitutional corporation ○ the Commonwealth ○ a Commonwealth Authority, or ○ a body corporate incorporated in a territory.
Corporate plan	A plan setting out the objectives, capabilities and intended results over a four-year period, in accordance with its stated purposes, required of Commonwealth entities under the PGPA Act.
Dispute resolution	The process conducted by the Commission, arising from the dispute resolution procedure in awards, agreements or the Fair Work Act, for resolving disputes.
Dispute resolution procedure	The procedure specified in a modern award or enterprise agreement for the resolution of disputes arising under the award or agreement and in relation to the National Employment Standards. If no procedure is specified, a model dispute resolution procedure specified in the Fair Work Act is deemed to apply.
Enterprise agreement	A legally enforceable agreement that covers the employment conditions of a group of employees and their employer.
<i>Fair Work Act 2009</i>	The principal Commonwealth law governing Australia's workplace relations system.

Fair Work Commission Rules	A legislative instrument made under the Fair Work Act setting out rules and procedural requirements for matters heard by the Commission.
<i>Fair Work (Registered Organisations) Act 2009</i>	Legislation regulating federally registered unions and employer organisations, including their registration and rules.
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	The legislation that governs transitional arrangements in connection with commencement of the Fair Work Act on 1 July 2009 and other related matters.
Full Bench	A Full Bench is convened by the President of the Commission and comprises at least three Commission Members, one of whom must be either the President, a Vice President or a Deputy President. Full Benches are convened to hear appeals and other matters specified in the Fair Work Act.
General protections	General workplace protections are specified in the Fair Work Act and include freedom of association; protection from discrimination and sham contracting; and the ability to exercise, or to not exercise, workplace rights.
Individual flexibility arrangement	An agreement between an employer and an individual employee that modifies the application of a modern award or enterprise agreement. The individual flexibility arrangement must satisfy the better off overall test. There is no requirement to register an individual flexibility arrangement.
Key performance indicator	A type of performance measurement (based on qualitative or quantitative data) used in assessing the efficiency or effectiveness of activities in achieving purposes.
Mediation	One of the informal processes used by the Commission to facilitate the resolution of a grievance or a dispute between parties by helping them to reach an agreement. Conciliation is another informal technique used.
Modern award	An award created by the Commission. Modern awards came into effect on 1 January 2010. Modern awards are expressed to cover entire industries and/or occupations, and include terms that complement the National Employment Standards. The Commission must ensure that, together with the standards, modern awards provide a fair and relevant minimum safety net.
National Employment Standards	A set of 10 minimum employment standards that came into effect on 1 January 2010 and apply to all employees within the federal system.
National minimum wage order	The order specifying a minimum wage for all national system employees, a casual loading for award and agreement-free employees, and special minimum wages for junior employees, trainees and employees with a disability.
Party	An applicant or a respondent to a proceeding before the Commission.

Portfolio budget statements	Statements that inform parliament and the public of the proposed allocation of resources to government outcomes. They also assist the Senate standing committees with their examination of the government's Budget.
Protected action ballot	A secret ballot allowing employees who are directly concerned to vote on whether or not they authorise industrial action to advance the claims for their proposed enterprise agreement.
Registration	The process by which unions and employer associations formally register as industrial organisations under the Registered Organisations Act.
Respondent	A party to a matter who is responding to an application initiated by an applicant.
Right of entry	The legal right of union officials to enter business premises under certain conditions for purposes described in the Fair Work Act or the <i>Work Health and Safety Act 2011</i> .
Right of entry permit	A permit issued by the Commission to an official of a union under either the Fair Work Act or the <i>Work Health and Safety Act 2011</i> .
Small Business Fair Dismissal Code	The Small Business Fair Dismissal Code came into operation on 1 July 2009. The code applies to small business employers with fewer than 15 employees and provides protection against unfair dismissal claims where an employer follows the code.

ACRONYMS AND ABBREVIATIONS

Ai Group	Australian Industry Group
APS	Australian Public Service
Commission	Fair Work Commission
Fair Work Act	<i>Fair Work Act 2009</i>
FWC	Fair Work Commission
FWCFB	Fair Work Commission Full Bench
GST	goods and services tax
ILO	International Labour Organization
IPS	Information Publication Scheme
KPI	key performance indicator
MUA	Maritime Union of Australia
NES	National Employment Standards
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PIR	post-implementation review
Public Service Act	<i>Public Service Act 1999</i>
Registered Organisations Act	<i>Fair Work (Registered Organisations) Act 2009</i>
Registered Organisations Regulations	Fair Work (Registered Organisations) Regulations 2009
ROC	Registered Organisations Commission
SES	Senior Executive Service
SME	small and medium enterprise
TRA	transitionally recognised association
TURC	Royal Commission into Trade Union Governance and Corruption
WAC	workplace advice clinic
WHS Act	<i>Work health and Safety Act 2011</i>

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