



# Plain language redrafting of unfair dismissal correspondence

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On 30 July 2018, the Fair Work Commission launched [What's Next? The Fair Work Commission's plan to improve access and reduce complexity for our users](#) (What's Next). As part of that initiative we announced a major review of our correspondence, notices and guidance material to ensure they are accessible, accurate and consistent.<sup>1</sup> The initial focus is on unfair dismissal information.

In early 2018, we published 2 research reports that examined how employees and small business employers experience our services.<sup>2</sup> A key insight from these reports was that our 'written correspondence, forms and other communication tools are difficult to understand, use 'legalese' and are not simple in format'.<sup>3</sup>

Participating in any legal proceeding can be stressful, especially for self-represented parties. We are committed to taking steps to minimise the confusion and anxiety that some people feel when encountering legal systems. The Commission's 2018 research report noted that 'using plain English in correspondence, forms and other communication tools could improve users' experience of the overall process'.<sup>4</sup>

The research suggested that:

All written materials and correspondence, including emails, notifications, forms, guides and education and information resources, should adopt clear and simple language. Additionally, any instructions and deadlines should be highlighted and consequences for missing deadlines should be clearly expressed.

[Final report: Unfair dismissal user-experience research](#)

Cube Group, March 2018, page 14

The Commission receives approximately 14,000 unfair dismissal applications each year.<sup>5</sup> This means that about 28,000 employees and employers are involved in unfair

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<sup>1</sup> [What's Next? The Fair Work Commission's plan to improve access and reduce complexity for our users](#), 30 July 2018, p 4

<sup>2</sup> [Final report: Unfair dismissal user-experience research](#), Cube Group, March 2018 and Working Better for Small Business, Agile advisory

<sup>3</sup> [Final report: Unfair dismissal user-experience research](#), Cube Group, March 2018, p 4

<sup>4</sup> [Final report: Unfair dismissal user-experience research](#), Cube Group, March 2018, p 4

<sup>5</sup> [Fair Work Commission Annual Report 2017–18](#)

dismissal cases each year. These parties receive a number of letters and notices as a part of the Commission's case management process.

We have started a major review of unfair dismissal information by reviewing the 87 template letters and notices generated and sent from our electronic case management system. This is the first time all of this material has been systematically reviewed since the *Fair Work Act 2009* commenced. The reviewed letters and notices will be ready to use with the transition to eCase, the Commission's new online case management system, in the second half of 2019.

The purpose of reviewing these letters and notices is to address the uncertainty and confusion that our research shows many self-represented employees and employers experience. Clearer correspondence will assist those parties more effectively, build trust in the process and support all users to make informed decisions about the cases they are involved in.

Below we explain the approach we have taken for improving the letters and notices, the consultation process we will now commence and our proposed next steps in the information review.

## Approach to plain language redrafting

A key recommendation from the 2018 user experience research was to 'soften the language, layout and structure of the correspondence'. The report also noted that 'such changes would require balancing the seriousness of the communications and that it is a legal process with the need to convey this information in a balanced, clear and concise manner.'<sup>6</sup>

Our objective is to transform the way we present information and how we communicate with users. In 2016, the Commission conducted a plain language pilot on the Pharmacy Industry Award 2010 (the Pharmacy award). The [report on that pilot study](#) concluded that participants found the plain language modern award easier to understand than the current Pharmacy award and identified a number of attributes that users preferred. Some of these general principles can be applied in redrafting other documents.

The Commission has taken into account the findings of its unfair dismissal user experience research, principles of general application gleaned from the modern awards plain language pilot and plain language principles in reviewing the unfair dismissal correspondence. We discuss some of the changes we have made below.

### Language & tone

We have reviewed the tone of the current letters. The formal and official tone of

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6 [Final report: Unfair dismissal user-experience research](#), Cube Group, March 2018

letters from courts and tribunals can be confronting, especially when a recipient is first told that a case has been lodged against them.

The tone adopted in the reviewed letters is intended to convey that the Commission holds fair proceedings and to reassure users that the Commission won't make decisions until all parties have had the opportunity to present their case. This has been done by adopting clear and neutral language and by explaining the Commission's processes in a simple way.

Where possible, we have used simple, non-technical words. Unfamiliar technical words distract the reader and diminish confidence in their understanding of the subject matter.

Sometimes it is not possible to use simple words. There may not be a simple alternative or a particular word may be essential to a legal point.<sup>7</sup> Where we use a technical or complex word, we explain it in a simple way to help our users become more familiar with language that they will need to know to participate in their cases effectively.

The reviewed correspondence has been written using the active writing voice where possible. Traditionally, legal correspondence and documents adopt the passive voice to create professional distance and a sense of formality. The active voice is more direct. It also expresses obligations more clearly by clarifying who has to do what.

We have also addressed applicants and respondents directly by using personal pronouns (such as 'you' and 'your') rather than referring to the recipient in the third person. The Commission refers to itself as 'we' in the reviewed correspondence.

We have also decided to address all correspondence to parties directly and not to their representatives because we believe that our users should be the focus of communication about them. Where a party is represented their representative will be copied into the letter.

## **Design & structure**

Plain language design principles have been adopted when designing the reviewed letters. The reviewed letters are in 12 point font size, use at least 1.15 line spacing and are left aligned. Page numbers have also been included on all letters. These changes, while small, make significant improvements to the readability of a document.

Organisation of the content of letters has been considered from a user's perspective. The most important information is given first and closely related material is grouped together. We have used short sentences and kept paragraphs to 2–4 sentences. We have also used bullet lists and tables to present detailed information in a simple way.

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7 Butt P. (2013). *Modern Legal Drafting*. Third Edition. Cambridge University Press. Melbourne, Australia, p 259

## Headings & subheadings

The current letters all have the same generic title ‘Application for Unfair Dismissal Remedy’ and the majority do not have subheadings. The reviewed letters have headings that specifically relate to the content of the letter. This will help make the purpose of our communication clearer to our users. The headings and subheadings are intended to address the key interests and motivations of the recipient of the letter. It is intended that the recipient will get a good idea of what is in the letter just by reading the headings and subheadings.

Headings are also in larger font than the text in the body of the document. This helps sight-impaired readers navigate the document.

## Legal content

We have not included extracts of legislation, rules or case law in the body of any letters. The language and phrases used in legislation, rules and case law often sounds obscure and unfamiliar to those without experience of the legal system. For this reason, we have included information about relevant legislation, rules and case law in grey boxes after the signature block so that those who want to can find more information.

## Accessibility considerations

We have run readability tests on all the current letters and reviewed letters to assess their reading ease and reading grade level. Readability formulas provide a simple measure of how difficult a document is to read. Flesch reading ease is scored between 1 and 100 — the higher the score, the easier a document is to read.<sup>8</sup> A reading score of 60–70 is equivalent to a grade level of 8–9.<sup>9</sup> A score of approximately 70 means the writing is suitable for most adult audiences.<sup>10</sup> The Flesch-Kincaid grade level converts the reading ease to a grade level.<sup>11</sup> If a piece of text has a grade level readability score of 8, this means that the average reader has to have a grade 8 level of reading or above to understand it.

We tested the readability of the body of current and reviewed letters.<sup>12</sup> The current letters have an average Flesch Reading Ease score of 46.94 which indicates they are difficult to read. The reviewed letters have a score 69.55 which indicates that the writing is suitable for most adults. The current letters had an average Flesch-Kincaid grade level of 10.6 (grade 11), and the most difficult of the letters scored 13.8

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8 Butt P. (2013). *Modern Legal Drafting*. Third Edition. Cambridge University Press, Melbourne Australia, p 173

9 Readable: <https://readable.com>

10 Butt P. (2013). *Modern Legal Drafting*. Third Edition. Cambridge University Press, Melbourne Australia, p 173

11 Butt P. (2013). *Modern Legal Drafting*. Third Edition. Cambridge University Press, Melbourne Australia, p 173

12 We excluded the address fields, case identifiers (such as case name and number), signature block and content of the footers. The current and reviewed letters were populated with the same applicant and respondent party names. We used [readable](https://readable.com) readability tests to score the letters.

(university level). The reviewed letters have an average grade level of 6.2 (grade 7), with the highest letter scoring 8.1 (grade 9). These results indicate significant improvements in the readability of the revised letters.

However, readability tests do not tell you whether: a document expresses its purpose clearly; the content is logically arranged; headings and subheadings act as good signposts; personal reference words like 'we' and 'you' are included; or whether the reader is likely to be motivated to read the content. For this reason, we will be consulting extensively on the reviewed letters. This will give us valuable insights into whether the reviewed letters have improved our communications for our users, as well as identifying further opportunities for improvement.

The International English Language Testing System (IELTS) determines the English language proficiency for non-native English language speakers.<sup>13</sup> The IELTS test is scored from 0 to 9, with 9 being an expert user. A 'modest' user has a partial command of the English language and can cope with overall meaning in most situations. Text with a score of between 5 and 7 is suitable for a modest English user. The reviewed letters have an average score of 4.01 and are therefore suitable for a limited to modest user.<sup>14</sup>

We have used a symbol recommended by TIS National Interpreter Services in our letters to help non-English speaking users identify translation services.



The symbol is the most commonly recognised symbol for interpreting services across language and cultural groups in Australia.

The use of the symbol and the proximity of a visible hyperlink is intended to lead non-English users to our website, where they can auto-translate the page into a language of their choice. Users who reach that webpage will see the same symbol. Even if they aren't able to auto-translate a webpage, they will see a phone number for TIS who can assist them.

## Consultation

We will make the reviewed letters available from 10 May 2019 and provide anyone interested with the opportunity to comment on them. The Commission will also consult its Termination of Employment User Group and Small Business Reference Group about the reviewed letters. We have published a sample of letters on our website for public review. Anyone who is interested in reviewing a more extensive selection of letters should email [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au).

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13 [Why is IELTS score an essential guide to writing for a global audience?](#) Readable.com

14 [Why is IELTS score an essential guide to writing for a global audience?](#) Readable.com

## Future information projects

In What's Next, we committed to an extensive review of the Commission's public information, starting with unfair dismissal cases.

Later in the year, we will commence the review of the unfair dismissal information on the Commission's website including guides, [practice notes](#) and the [Unfair dismissals benchbook](#). We will also review the unfair dismissal application, response and objection forms, and the application for fee waiver form. We will focus on improving the plain language capabilities of all staff in client facing roles. This will mean that staff who correspond with unfair dismissal parties will be able to do so in plain language in their written and oral communications.

We intend to make short video animations to demonstrate particular points of law relevant to unfair dismissal matters and other individual application case types such as late lodgments of applications.

After the review of unfair dismissal information, we will review letters, notices and website information for the Commission's other individual application types.

## Find out more

Please email [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au) if you have any further questions or comments about our information projects.