

President's statement

Enterprise agreements – Timeliness benchmarks

Justice Ross, President

Melbourne, 12 April 2021

[1] This Statement provides information about the Fair Work Commission's agreement approval process, internal timeliness benchmarks and initiatives undertaken to improve timeliness. It also sets out new timeliness benchmarks for the Commission to determine applications for approval of enterprise agreements, and details reporting arrangements that will be implemented as a result of the new timeliness benchmarks.

Enterprise agreement approval applications

[2] The Commission deals with a large volume of applications to approve enterprise agreements. In the 2019–20 financial year, more than 4,300 agreement applications were finalised by the Commission. Of these, 4,099 were approved, 40 were dismissed, and 244 were withdrawn. The overwhelming majority of applications are for single-enterprise agreements.

[3] The Commission's process for dealing with enterprise agreement applications is as follows:

- the details of each application and a link to the agreement are published on the Commission's [Agreements in progress](#) webpage within 2 working days of lodgment
- all identified bargaining representatives are sent an email confirming the approval application has been lodged and outlining their obligations to serve copies of the application on other persons. Parties are notified that they have 7 business days from the date of lodgment of the application to make any submissions supporting or objecting to approval of the agreement
- staff of the Commission conduct a comprehensive analysis of the application and then complete a legislative checklist
- a Commission Member determines whether the agreement should be approved, having regard to any material lodged, or if an undertaking should be sought or accepted.

[4] Most applications are dealt with on the papers, without a hearing. Only around 10 per cent of applications are listed for hearing, usually when a Commission Member considers it necessary or desirable to conduct a hearing (for example if the matter is complex), or when an interested party has requested a conference or hearing during the approval process.

Internal timeliness benchmarks

[5] Currently, there are two internal timeliness benchmarks for enterprise agreement approval applications.

[6] For compliant agreements that are supported by complete applications at lodgment¹ and can be approved without undertakings or any follow up ('simple applications'):

- 50 per cent are to be finalised within 3 weeks, and
- 100 per cent are to be finalised within 8 weeks.

[7] For applications that require undertakings or cannot be approved based on the material provided at lodgment, contested applications, and applications requiring a hearing ('complex applications'):

- 50 per cent are to be finalised within 10 weeks, and
- 100 per cent are to be finalised within 16 weeks.

[8] From 1 July 2020 to 31 March 2021, compliant agreements that were supported by complete applications at lodgment (that being 28% of all lodgments) were approved within a median of 13 calendar days, or 9 working days. All applications were determined in a median of 24 calendar days (or 19 working days).

[9] As at 31 March 2021, there were no applications in the system more than 16 weeks old. Of the 235 applications currently being considered by the Commission, 96 per cent were lodged less than 8 weeks ago, with 90 per cent of applications being determined within 6 weeks of lodgment.

[10] There has been a significant improvement in timeliness of approving enterprise agreements in recent years. As shown in Table 1, the improvement has occurred across all categories of agreement applications since 2017–18.

¹ A complete application is an application that is accompanied by all documents required under the *Fair Work Act 2009* and the Fair Work Commission Rules. A compliant agreement is one that satisfies the approval requirements under the *Fair Work Act 2009* without undertakings.

Table 1: Median calendar days to approve agreements

| Median calendar days from lodgment to approval | PBS KPI ^a | 2017–18 | 2018–19 | 1 Jul–31 Dec 2019 | 1 Jan–30 Jun 2020 | 1 Jul 2020–31 Mar 2021 |
|---|----------------------|---------|---------|-------------------|-------------------|------------------------|
| Agreement approved without undertakings | 32 days | 32 days | 30 days | 20 days | 17 days | 16 days |
| Simple applications ^b | – | n/a | 19 days | 15 days | 14 days | 13 days |
| All agreements approved (with & without undertakings) | – | 76 days | 79 days | 37 days | 33 days | 26 days |

^a This is the Portfolio Budget Statement Key Performance Indicator set in the 2019–20 Budget Papers at p.127

^b ‘Simple applications’ are complete and supported by a compliant application that can be approved based on the material provided at lodgment. ‘Complex applications’ are all other applications, including those that require an undertaking or follow up by the Commission after lodgment.

[11] The Commission’s performance against its internal benchmarks in the most recent six month period to 31 March 2021 is set out in Table 2 below.

Table 2: Timeliness Benchmarks

| Enterprise agreements timeliness | Internal benchmark | Actual performance | | | | |
|-------------------------------------|--------------------|--------------------|-------------------|-------------------|-------------------|-------------------------|
| | | 2018–19 | 1 Jul–30 Sep 2019 | 1 Jul–31 Dec 2019 | 1 Jan–30 Jun 2020 | 1 July 2020–31 Mar 2021 |
| Simple applications ^a : | | | | | | |
| approved in 3 weeks | 50% | 60% | 61% | 64% | 77% | 81% |
| approved in 8 weeks | 100% | 89% | 95% | 96% | 97% | 99.2% |
| Complex applications ^a : | | | | | | |
| approved in 10 weeks | 50% | 21% | 65% | 72% | 76% | 96% |
| approved in 16 weeks | 100% | 62% | 80% | 85% | 90% | 99.8% |

^a ‘Simple applications’ are complete and supported by a compliant application that can be approved based on the material provided at lodgment. ‘Complex applications’ are all other applications, including those that require an undertaking or follow up by the Commission after lodgment.

Initiatives to improve compliance and timeliness

[12] The improvement in the Commission's approval timeliness has been achieved through a combination of initiatives focused on the Commission's processes, together with providing better tools, information and assistance to parties. These initiatives have been outlined in previous Enterprise Agreement Updates², and are set out below.

Information tools and resources

[13] A number of different agreement related resources have been published, including:

- an online tool to enable employers to lodge a compliant Notice of Employee Representational Rights
- a step-by-step guide to making compliant single-enterprise agreements
- a legislative checklist (including a checklist for varying agreements)
- an online automated date calculator to assist parties to comply with all legislative timing requirements
- a guide to making undertakings.

[14] The [Agreements](#) pages on the Commission's website have recently been revised to make them easier to navigate. The Commission is also currently undergoing a broader website review which will provide further enhancements.

[15] The Commission publishes a weekly [Bulletin](#) and [Quarterly Practitioner Update](#) on case law. This includes guidance on specific matters that result in common mistakes, such as model terms for NES precedence clauses.

Education and engagement

[16] The Commission continues to work with the Agreements User Group established in early 2019 comprising the employers and organisations that lodge, or are associated with, the greatest number of agreement applications. The group provides a forum in which the Commission can hear directly from employers, unions and employer organisations about their experiences and

² See [Enterprise Agreement update 24 February 2020](#); [Enterprise Agreement Update 16 August 2019](#).

ideas to improve agreement approval processes. This group has provided ideas about improving case management practices and information resources.

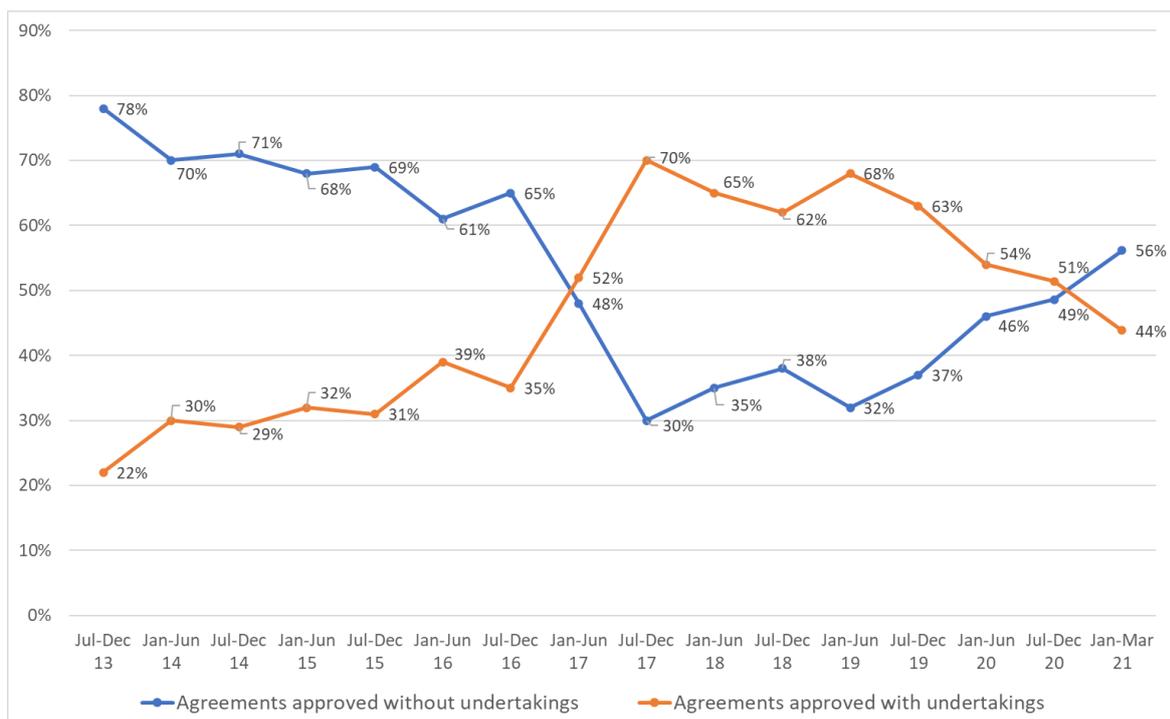
[17] The Commission has also engaged with frequent users to assist with their experience of the agreement approval process. In 2020 the Commission held 14 sessions (mostly via videoconference) with 150 attendees from 45 organisations. The purpose of the sessions was to discuss improvements in enterprise agreements and approval applications. Tailored information was provided to each party identifying common errors in their applications and how they could be overcome.

[18] The Commission offers parties who are intending to lodge a large number of applications the opportunity to submit a draft of their applications for a 'pre-lodgement assessment'. Commission staff, and where appropriate a Member, will review the draft and provide feedback on any issues that may prevent or delay approval when the agreement is lodged.

Improved compliance

[19] Our focus on education has led to a significant reduction in the proportion of agreements requiring undertakings before they can be approved. The proportion of agreements approved without undertakings has increased to 56 per cent of all agreements approved, from a low of 30 per cent in late 2017. This is set out in Chart 1.

Chart 1: Proportion of agreements approved with and without undertakings, July 2013 to March 2021



New initiatives

Form F16 and online lodgment service

- [20] The Commission has developed an improved online lodgment service which will initially allow users to lodge single-enterprise and multi-enterprise agreements electronically via an online Form F16 – Application for approval of enterprise agreement (other than a greenfields agreement). This will assist both parties and the Commission by reducing the need for follow up and consequential delays in approval. The online Form F16 pre-populates information and alerts users when key information has been omitted or appears incorrect.
- [21] The online lodgment service allows users to create an account, save partially completed forms and view the history and status of submitted applications.
- [22] The online lodgment service will integrate with the Commission’s case management system and will support the development of further online forms for other matter types. This will reduce processing time at lodgment and assist with compliance.
- [23] The online lodgment service and online Form F16 was launched to a select group of users on 12 March 2021. This will provide the Commission with valuable feedback and suggestions prior to a broader public launch in April 2021.
- [24] The Commission will transition from paper-based applications to online applications as the preferred method of lodgment of single-enterprise and multi-enterprise agreements. Assistance will be provided by Commission staff to support the parties with this transition.

Form F17

- [25] The Commission has also commenced development of an online Form F17 – Employer’s declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement) within the online lodgment service. The online Form F17 will include built-in logic, alerts when dates do not meet legislative requirements or answers are omitted, prompts to guide a user to lodge compliant applications, and allow users to share and collaborate on the form prior to lodgment. A timeline for the development of this online form is outlined under ‘Next steps’.

Changes to administrative processes

- [26] A number of changes to the Commission's administrative processes are being implemented to assist in improving timeliness.
- [27] Changes have been made to the Commission's lodgment and processing practices. The current processes are outlined at [3]. Copies of agreements lodged for approval will no longer be redacted before being published on the [Agreements in progress](#) page on the Commission's website, and the separate lodgment email and subsequent email relating to service will be merged and sent as one email. Agreement approval applications will be given the highest priority for processing upon receipt.
- [28] In addition to the implementation of the smart form F16 and F17 (see [20] – [25]) the Commission has undertaken a process of reviewing questions on certain forms in an attempt to assist parties to file complete applications (and therefore limiting administrative follow up time for both the parties and the Commission).
- [29] The Commission will host webinars to engage with parties and provide guidance on changes arising to processes for enterprise agreements and timeliness benchmarks, and detail practical changes that have been made to relevant processes. The webinars will be held at regular periods and will be used in the future for educative purposes.

Next steps

New internal timeliness benchmarks

- [30] From 1 May 2021, the Commission will be working toward new internal timeliness benchmarks as follows:
- (a) For compliant agreements that are supported by complete applications at lodgment³ and can be approved without undertakings or any follow up ('simple applications'):
- 50 per cent are to be approved in 10 working days
 - 95 per cent are to be approved in 20 working days
- (b) For applications that require undertakings or cannot be approved based on the material provided at lodgment, contested applications, and applications

³ A complete application is an application that is accompanied by all documents required under the *Fair Work Act 2009* and the Fair Work Commission Rules. A compliant agreement is one that satisfies the approval requirements under the *Fair Work Act 2009* without undertakings.

requiring a hearing ('complex applications'):

- 50 per cent are to be approved in 20 working days
- 95 per cent are to be approved in 45 working days

[31] The Commission has commenced a project to review its current performance and reporting framework. We have engaged ACIL Allen who will provide recommendations on performance reporting and target setting. The new benchmarks outlined above have been developed in line with initial suggestions arising from this project.

[32] The Commission will begin reporting on the new internal timeliness benchmarks outlined above on a quarterly basis. The Commission will review the benchmarks over time and seek to continually improve our performance.

Online lodgment service

[33] As detailed at [20] – [25], the Commission has developed an improved online lodgment service for Form F16 and has commenced development of an online Form F17. The development of the online Form F17 is expected to be completed by the end of this financial year. The development of this online lodgment service is an important initiative that the Commission has been working on for an extended period of time.

PRESIDENT