



# Discussion paper

# Agreements user experience research

June 2018

The Fair Work Commission (the Commission) has recently engaged *Pivot Management Consulting* to examine the user experience of its agreements function. This research complements and builds on a range of related projects, including unfair dismissal user experience workshops and client service surveys that place users at the centre of initiatives to improve service delivery.

This user experience research will involve workshops with applicants, bargaining representatives and bargaining agents in addition to research with Commission staff and Members. The workshops will seek feedback and ideas on:

- case management processes and procedures, including turnaround times
- communications (eg lodgment notification, requests for undertakings, decisions, etc.)
- information resources about procedure, statutory requirements and evolving case law
- how Commission staff and Members engage with parties, and
- other issues and topics raised by users.

This discussion paper provides contextual information to help prepare for the workshops. Further information will be shared during the sessions to facilitate discussion.

## How to get involved

User experience workshops will be scheduled in July and August 2018 in Sydney and Melbourne. Email [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au) to find out more and to register your interest in participating. Further workshops may be scheduled for later in the year.

## How the information will be used

*Pivot Management Consulting* will prepare a report of findings that will make some recommendations and proposals based on feedback and ideas generated from the research.

The Commission is committed to protecting privacy and adheres to the *Privacy Act 1988* (Cth). All comments and contributions will be used for research purposes only, will remain confidential and will not be attributed to individual participants. All personal information provided will be handled in accordance with the Commission's [Privacy policy](#).

*This discussion paper is not intended to be comprehensive. It is designed to assist in generating discussion. The Fair Work Commission does not provide legal advice.*

## Overview of the agreement approval application process

The Commission must be satisfied that requirements set out in the *Fair Work Act 2009* (Cth) have been met, including that the agreement passes a Better Off Overall Test (BOOT) before it can be approved. Following assessment of the application, a Member will either: approve the agreement, approve the agreement with undertakings or not approve the agreement. In some cases applicants may be given the option of withdrawing their application if it has little prospect of being approved.

Agreement-approval applications are subject to a triage process. The process was established in October 2014 and was independently reviewed in 2015. A [report](#) of approval processing timeframes and consistency of treatment outcomes was published in December 2015.

The triage process involves a team of specially-trained staff performing a preliminary review of the material lodged within 10 business days of lodgment. The team then completes a [checklist](#) and provides it to a Commission Member for consideration. At the request of a Member, the process may also involve modelling and analysis that compares entitlements under the agreement and the relevant award and requesting additional or clarifying information from the applicant if there are errors or omissions in the material lodged.

If a Member requires clarification to ensure that an agreement meets the approval requirements, they will consider whether the issues can be addressed with an undertaking. Staff may be directed by a Member to seek an undertaking rather than the Commission dismissing the application, thereby avoiding the need for a new bargaining process, and the costs and delays that would result.

Undertakings are most commonly required for inconsequential technical errors, to overcome inconsistencies between the agreement and the National Employment Standards and to address minor issues with the BOOT.

The Commission has recently published the [10 tips for agreement making](#) information resource. Additional information about common issues may be provided to workshop participants.

## Resources to assist parties with agreement-approval applications

The Commission has developed and published a range of information resources and tools on the [Make an agreement](#) page of its website, including the [Enterprise Agreements Benchbook](#) (updated 31 July 2017). An update to this Benchbook is underway.

## Information about agreement-making applications and outcomes

Information about the number of agreement applications lodged and outcomes is published in [quarterly reports](#)<sup>1</sup> and [annual reports](#)<sup>2</sup>.

The proportion of agreements approved with undertakings increased significantly over the 12 months to December 2017. Approving agreements with undertakings involves additional steps including seeking the views of the employer and bargaining representatives, then further consideration by Members. Consequently, the time taken to determine these applications is longer than for agreements that do not require undertakings.

<sup>1</sup> *Fair Work Commission quarterly reports, Sched 5.2, Part 4.1.*

<sup>2</sup> *Fair Work Commission Annual Report 2016–17, available from: [https://www.fwc.gov.au/documents/documents/annual\\_reports/ar2017/fwc-annual-report-2016-17.pdf](https://www.fwc.gov.au/documents/documents/annual_reports/ar2017/fwc-annual-report-2016-17.pdf), pp 53–63.*