



Final Report

Fair Work Commission

Agreement Approval Services
User Experience Research



Welcome

Pivot Management Consulting was engaged by the Fair Work Commission (the Commission) to undertake qualitative research to explore the views, experiences, and ideas for improvement shared by users of the Agreement Approval process.

The report summarises the key qualitative feedback provided by users throughout the project. It also outlines Pivot's recommendations for how the Commission could optimise the Agreement Approval process for users.

The report is based primarily on the experiences, observations and suggestions of users but it also draws on input from Commission staff and Members.



Fair Work Commission
Australia's national workplace relations tribunal

PIVOT



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Background

The Commission has increasingly focused on how to make its services as accessible, user-friendly and efficient as possible.

A critical step in this process is understanding the needs of its users: employees, employers, their representatives, and other members of the Australian community.

Drawing on leading public-sector thinking in user design and behavioral insights, the Commission has embarked on a range of projects focusing on better understanding user experiences.

As part of this ongoing effort, the Commission engaged Pivot Management Consulting to examine the experience of users of its Agreement Approval Process.

Agreement Approval Process

Enterprise Agreements was selected as one of the areas of user-research focus. Average processing speed of agreement approvals had recently declined, due to evolving case law and an increase in the number of non-compliant applications.

The case law generated from decisions of the High Court, the Federal Court and the Fair Work Commission resulted in a large number of agreements not meeting statutory requirements, with approximately 68% of agreements approved in 2017-18 requiring undertakings.

Hearing from users gives the Commission the opportunity to make the process as efficient & user-friendly as possible. Longer term, this supports better access to justice and more efficient & effective processes for users.

Research Approach

Pivot's research approach has sought to collect practical feedback focused on the Commission's:

- Case management processes & procedures (i.e. forms, timeframes and other requirements),
- Communications throughout the case management process (e.g. correspondence),
- Information resources, and
- How Commission staff & Members engage with users.

To do this, Pivot has consulted a diverse range of users in multiple states, as well as Commission staff and Members.



Findings & Recommendations

The recommendations in this report are based on the feedback and ideas shared by users, Commission staff and Members. The recommendations propose actions that appear to present great upsides for users & the Commission, and many options could be implemented relatively quickly.

The recommendations also include actions to optimise the experience of users.

Key findings and recommendations include:

- Clear and transparent communications about expected timeframes for approval and pathways to expedite applications in the event of exceptional circumstances.
- Further steps be taken to ensure information resources and forms reflect all requirements for approval, especially in the context of evolving case law.
- Make information resources more accessible and easier to understand for infrequent users, including how guidance materials are presented.
- Users would like to better understand the Commission's processes and how applications are assessed, particularly the BOOT assessment. More use of hearings and conferences may be beneficial, noting that decisions on-the-papers is often the most efficient and effective method.
- Users want clear communications about: when their applications are found to be deficient, the issues identified as being possibly contrary to law; the options to remedy issues through undertakings or other means; and reasons for decisions (particularly where undertakings are required).
- Frequent users want more direct engagement with Members of the Commission about agreement-approval processes,

forms and information resources, particularly on the topic of evolving case law.

- Users praised some of the information resources provided by the Commission such as the Benchbook. Users requested more and better resources and resources which are tailored towards different types of users (e.g. frequent versus infrequent users).
- Users were also complimentary of the Commission in its willingness to engage in this form of research. Many felt it shows the Commission is giving greater importance to the views of users than in the past, and they request further engagement.

Thank you

Everyone involved in the research, including users, Commission staff and Members, were extremely generous with their time, open, practical and thoughtful in their contributions.

If you have any questions, please don't hesitate to contact me.

Andrew Millhouse

Managing Partner
Pivot Management Consulting

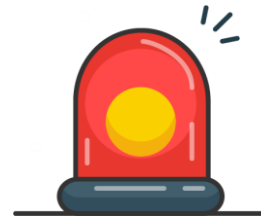




Overview of User Insights

Key Themes

Overall, five consistent themes stood out. They arose from user feedback, and they're pictured to the right.



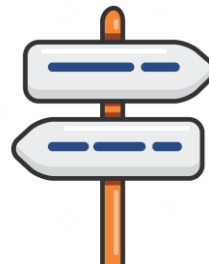
Increasingly technical requirements

Users felt the Agreement approval process has become increasingly technical and difficult to navigate because of developments in case law and the subsequent narrowing of the Commission's discretion. This makes the process difficult for average users to navigate without specialised support.



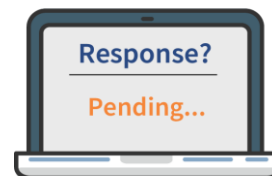
Delayed processing & results

Users believe the Agreement approval process takes a long time to generate a result.



Inadequate education, explanation & guidance

Users wanted better education & guidance on new and evolving Agreement Approval processes. The opportunity exists to provide tailored information, in a range of different formats and at different stages in the Agreement-making process to improve the user experience.



Communication issues

Users felt the Commission's communications about delays could be improved. Similarly, they would like greater support or guidance about the requirements and processes of Agreement approvals.



Inconsistent processes & outcomes

Users believed there might be some variation between applicants in matters such as: processing speeds, the way applications were assessed, requirements for additional information/evidence, and the kinds of undertakings required.



Pre-Application

Pre-Application



What is this stage?

Users undertake all the activities required to put themselves in the position to submit a compliant application (e.g. issuing notice of employee representational rights, appointing bargaining representatives, drafting and agreeing upon terms, etc.). This is the stage where users may/should be accessing information resources to educate themselves on requirements and identify what they need to do in advance of filing an application.

Where does this stage “fit”?

For the Commission, this is the least “active” phase of the agreement-making process. It involves limited interaction with users. For frequent users there may be no interaction with the Commission and its resources during this stage. However, the Commission has the opportunity to provide greater assistance to users, particularly infrequent users. For users, this stage is viewed as the most significant element of the process. Some infrequent users may be engaging with information resources but often only briefly. Their attention is primarily focused on negotiating terms of agreements — a critical activity for users and one that can be extremely impactful, stressful and time-consuming.

Why does this stage matter?

It’s particularly important for users to access useful resources at this stage because approval requirements have become more complex due to evolving case law. Many activities completed before submitting an application influence whether the application is ultimately compliant. Assisting users to understand the requirements of the process at this stage can lead to downstream improvements on efficiency (e.g. mitigate the need for, or at least limit, the number of undertakings).

Pre-Application



What do users think?

Users believe there is an opportunity to prevent avoidable mistakes. Currently, agreement-making mistakes only become known to users at the Agreement Approval stage. Users feel they could be provided with tailored information which would better inform them on what they need to do to submit compliant applications.

Legislatively, responsibility for education & advice sits with the Fair Work Ombudsman (FWO): s.682 (1)(a)(ii) of the *Fair Work Act 2009* (the Act) requires the FWO to promote compliance with the Act and fair work instruments, by providing education, assistance and advice. However, users reported they seek education and information about agreement-making requirements from the Commission. It is likely that this would require legislative change and additional resources.

The information produced by the Commission was considered reasonably useful by users. However, existing resources seem to be pitched somewhere in-between the simple, step-by-step preferences of infrequent users and the more detailed, specific and technical preferences of frequent users. Users explained this means they learn how to lodge compliant applications primarily through trial-and-error, not through pre-application guidance.

Commentary

Users need to adapt to a more rigorous agreement-making and approval environment. However, the education and information tools and resources available to users are not enabling users to do that. User feedback and outcomes from agreement approval applications demonstrate this.

Education and advice on agreement-making should be readily available. Although, the Commission's role is difficult with respect to individual applications which come before it, the opportunity exists to provide greater education and support to all persons contemplating agreement-making.

There is an opportunity to enhance the guidance which can be made available. Existing education resources contain relevant and useful information, but they could be better targeted to enable users with different knowledge bases to understand what is required of them.

Pre-Application



Commentary (cont.)

Infrequent users and their representatives explained it is difficult for them to research and interpret case law. This makes it harder for them to meet the requirements of the Act relating to agreement content and approval requirements. This is particularly true for smaller businesses, without dedicated human resources or legal staff.

Although it is users' responsibility to educate themselves about agreement requirements and invest sufficient time/effort to submit compliant applications, greater support and guidance on what is required would be welcomed.

Pre-Application



General Guidance & Education

Some users mistakenly believe the Commission has a legislated ‘educative function’. Pivot notes the Commission does not have a legislated education function.

It does have a legislative responsibility to provide information about its functions and activities. Additionally, it is in the interests of both the Commission and users that compliant applications are lodged. This can be supported by the provision of information and guidance to users.

Users identified several opportunities for the Commission to assist them through the provision of information resources:

- Evolving case law relating to Agreement approval is impacting how users need to go about bargaining, drafting agreement content and working through agreement-making requirements. Users believe faster updates on developments in case law and better information on the impacts of such developments would be beneficial.
- Some users feel they would benefit from having a ‘real-person’ interaction: a person who can explain the process.
- Some users felt existing resources and webpages need to advise less frequent users of the agreement-making process about the need to allocate appropriate time and resources towards understanding all elements of the Agreements approval process.
- Education material should be more accessible and diverse. Almost all of it is written documentation. There is an opportunity to provide alternative presentations such as visual depictions of information, audio-based education or videos.

- There is the potential to provide examples of what to do or, equally usefully, what to avoid.
- Users prefer material which is written in simple, plain English.
- There should be a simple “access point” to start learning about the process. Further, the aim of the guidance materials should be to gradually guide users towards greater complexity and detail.
- Guidance including tools and other educative resources should be available on how to undertake a BOOT assessment.

Website

Users felt the Commission’s website has useful information but could be improved to assist users find information more quickly. Users think the Agreements webpages could be better structured so information/resources are easier to find. This could be achieved through a more efficient search function, more self-help activities and a cleaner user interface.

Visual depictions of the process, timelines, etc. are sought by many users who believe that such depictions are the simplest and easiest way to absorb information.

Users also felt the information on the Commission’s website is too generalised. They seek information which reflects the industry/sector of their business. They also seek information which reflects the level of experience of the user. The information should be capable of being tailored to users depending on their level of experience.

Pre-Application



Agreement Benchbook

Frequent users praised the Benchbook as an extremely useful resource. Users complimented its comprehensiveness, inclusion of links to additional information and depth of content. However, users noted the Benchbook is primarily useful for practitioners.

There is an opportunity to make the Benchbook more accessible to infrequent users. This could be achieved through using plain and meaningful language in both the title and the text of the Benchbook. It could include visual depictions. Finally, it could be made easier to navigate. Currently, it's not the type of document users would read from start to finish.

Step-by-step guide

Users believe the guide contains “hidden” resources that should be available separately. The sample timeframe at Annexure 1 was considered useful; although it could be made more visually appealing. The Checklist that appears at Annexure 2 could be enhanced to better explain the BOOT, be made more visually appealing, and then provided separately to users.

Other Resources

Other resources provided by the Commission (10 tips on Agreement Making, NERR generator, Date Calculator) were considered useful but were under-utilised. Many users were unaware some of them existed.

Sophisticated practitioners believed many of these tools were designed for infrequent users and would benefit them.

Some users noted there are limited visual tools. Some users believe there is an opportunity to improve the range and type of resources (e.g. video), rather than creating additional written documents. The written documents that exist could be rewritten in plain English. Further, there was a desire for resources showing users what they should not do. Users felt these kinds of resources can set useful boundaries.

The Commission advised that it is not currently resourced to provide the full suite of information resources sought by users.

User Engagement

Users praised the Commission's decision to undertake this research, believing it shows the Commission is giving users' views and experiences greater recognition than in the past.

Many users desired increased engagement with Members. Education activities about approval requirements were suggested. There was also a desire for Members to advise frequent users about implications of evolving case law.

Engaging regularly with users is important and should occur. However, Pivot notes the Commission's nature and responsibilities as a Tribunal mean it will need to consider how to best approach engagement as well as the delivery of information resources to the users.

Recommendations

Index	Suggestions	
1	Consider redesigning/refining existing education materials so they provide different types of users with a more comprehensive, customisable and accessible source of self-education/self-help information.	<p>The Commission should consider the viability and appropriateness of activities including, but not limited to:</p> <ul style="list-style-type: none">• “Tiered/layered” or tailored information packages aligned to user-type (e.g. resources for sophisticated agents/employers & different packages for first-time users).• Diversifying educational channels to include visual, video and audio options.• Refining existing materials to be more accessible & engaging (e.g. adding visuals, emphasising plain English, etc.). For example, making the Benchbook more accessible.• Enhancing the checklists and step-based guides to be more visually appealing.• Providing examples of redacted compliant applications, agreements, etc. (and potentially ones that have not been compliant, to demonstrate inadequacies & submission mistakes).• Guides linked to F16 & F17 that can provide accurate, up-to-date information on requirements where these forms cannot keep pace with evolving case law.• Publish commonly occurring application & undertaking issues with examples/case studies, so users can proactively avoid them
2	Develop better, more targeted education resources for users.	<p>The Commission should seek, subject to resources and its legislative mandate, to develop higher volume, greater quality and more targeted education resources. Any recommendations relating to educational resources may also apply to the FWO.</p>
3	Redesign the Agreements webpages so they are simpler to navigate and prioritise learning.	<p>The Commission should consider the viability and appropriateness of activities including, but not limited to:</p> <ul style="list-style-type: none">• Centralising all education/support materials in a single location on the webpage (e.g. position on a single webpage). This may look like a downloadable Zip file that includes all resources, arranged from most simple/accessible to most complex.• Redesigning the search function so agreements, decisions and the current status of agreement applications are easier to find• Embedding visuals into the webpage
4	Provide users with semi-regular updates on notable changes in case law and include explanation of what these changes mean for users during the pre-application and application stages.	<p>The Commission should consider the viability of:</p> <ul style="list-style-type: none">• A newsletter users can subscribe to• A semi-periodic statement published on the Agreement webpages• Communication to associations, major employers, unions• Adding functionality or a summary section that presents case law in the Benchbook by date so that users can easily identify decisions that have been made since their last agreement-making experience.
5	Identify viable education methods the Commission may be able to provide to users or refer them to.	<p>The Commission should consider the viability of periodic (e.g. quarterly) workshops/seminars/twilight sessions to provide updates on changes and guidance on what’s required to submit compliant applications.</p>



Recommendations (cont.)

Index	Suggestions	
6	Engage & consult more regularly with users for feedback, exploration of issues and testing of new ideas.	<p>The Commission should consider the viability and appropriateness of more frequent:</p> <ul style="list-style-type: none">• User surveys• User workshops• User testing of new solutions/processes• Individual/small group consultations• Seminars/other forums• A user group committee
7	Determine how the Commission can provide any additional guidance on the BOOT assessment (e.g. what formula are used).	<p>If more information can be provided it may increase the quality of applications. Consequently, the Commission (and the FWO) should investigate what information can be appropriately provided to users for use during the pre-application stage.</p>
8	Investigate viable methods for disseminating education prior to users commencing the agreement-making process, and prior to application lodgment.	<p>Parties are not obliged to negotiate replacement agreements so the Commission must carefully avoid giving the impression that users must or should do so. However, infrequent users could greatly benefit from access to education materials before commencing the agreement-making process. It's likely to prevent issues arising later in the process.</p> <p>The Commission and the FWO should explore appropriate mechanisms for disseminating education materials earlier than users currently access them. The Commission may be able to identify practices it can refine or introduce to achieve this objective. However, the Commission is not currently resourced and does not currently have a legislated education function.</p>
9	Consider accepting general enquiry phone calls from users during this stage (e.g. a helpline) rather than directing users to make enquiries via email.	<p>Consideration should be given to taking enquiry phone calls from users during this stage, rather than directing users to the member assist email address. Phone calls can provide users with the information they require more efficiently and help the Agreements team resolve queries for users that could prevent issues/missteps in the pre-application process and lead to downstream efficiencies.</p>





Application Process

Application Process



Pivot asked users to share their experience of preparing application materials and lodgment.

What is this stage?

Users are completing relevant forms and lodging them (along with other related/ supporting materials). This stage also includes notification of lodgment, and the wait-time between lodgment and the first contact from the Commission following the detailed assessment of the application.

Research focused on the useability/accessibility, accuracy, and effectiveness of forms (e.g. F16, F17, F18). It also explored how accurately the Commission articulated what information it required from users and how appropriately and effectively it communicated with users.

Where does this stage fit for users?

This is a latter-part of the agreement-making process for users: they've been working through a broader bargaining process. Users have reached an agreement with all parties and are eager to proceed to implementation of the agreement as efficiently as possible.

To do this, users want a highly accessible, transparent, predictable process of having their Agreements approved. This means having a clear understanding of what information the Commission requires, including the level of detail to provide and the evidence needed to meet approval requirements. It also means being able to complete forms in a reasonably efficient way.

Why does this stage matter?

Getting the application “right” can result in significant downstream efficiencies. Alternatively, omissions and mistakes at this point can lead to delays. The more accurately and completely a user can populate the forms with the information the Commission requires, the less likely it is the Commission will need to request additional information, clarifications and undertakings. The fewer clarifications required, the more efficiently the Commission can process the applications.

Application Process



Pivot asked users to share their experience of preparing application materials and lodgment.

What do users think?

Overall, users found this part of the process to be reasonably user-friendly. However, they did identify issues.

- Users believe opportunities exist to clearly identify what the Act and case law require from applicants. Users felt current application forms are reasonably simple and appropriate mechanisms for collecting information. Additional guidance within the forms would make the forms better.
- Users believe timeframes can be better communicated. They want guidance on how long their Agreements will take to be processed and to be advised of any potential delays.
- Users also want to be told what the best method of communicating with the Commission is when seeking updates on an application.

Commentary

Although application forms can be enhanced, they're reasonably accurate & modern, appear to ask most of the necessary questions, and all questions appear to be relevant.

Nevertheless, optimising the application stage is important. It can result in significant “downstream” benefits and prevent issues from arising which might reduce the efficient administration of the process.

Application Process



Guidance on Commission's requirements

Users believe application forms could provide better guidance on how to respond to application questions. Specific requests include:

- Users requested greater clarity around the type and volume of information they should attach to an application. Similarly, they requested guidance on the level of detail required in responses to questions.
- Users don't want to provide irrelevant or inaccurate information that might result in additional administrative effort for the Commission and delays. They also don't want to provide too little information. Better guidance could assist with the more accurate completions of forms.
- Employers requested the Commission clearly state whether it is acceptable to leave a question blank, if the user does not know the answer or cannot answer with accuracy.
- Finally, users expressed confusion over how they should compare their Agreement to the relevant modern award(s). Guidance would reduce the number of applications which are accompanied with inaccurate information.

Although all users made these requests, they were considered particularly important for infrequent users. Infrequent users appear to regularly rely on external organisations for support. For example, several unions

explained that employers request their support in understanding what is required of them in the F17.

Members and staff noted the rigour required in forms (e.g. F17) has increased as a result of evolving case law. They also confirmed that requesting additional information from users can delay the processing of applications.

To limit the frequency of requests for additional information, there may be merit in exploring ways to better describe how much detail is required in forms and when applicants should include attachments.

Statutory Declarations

Both employer and union participants expressed a strong preference for the declarations in F17 and F18 to be given greater weighting.

However, the Commission may not have discretion in how it treats declarations. The weighting the Commission or any decision-making body can give to declarations will often be heavily informed by legislation and case law. Evolving law may result in greater or lesser reliance on declarations, and bodies like the Commission are bound to follow the law. Nonetheless, there is potential to better communicate when and how changes to law are shaping applications.

Application Process



Notification of lodgement/service email

Users requested greater clarity about the case management of applications. Users believe the Commission could provide information about who is managing their application (e.g. name of staff member & Member the matter is allocated to).

Users also requested a clear description of how to contact the Commission in the event of queries (including what phone number/s, emails, etc. to use). Users also sought information on the best way to find out the status of their application.

Users also requested accurate estimates of when their application result will be delivered. Pivot notes it is extremely difficult to provide accurate approval time estimates. Each case varies and processing speed is affected by a range of factors (e.g. case law changes, industry trends/events, staff/resourcing changes, number of applications received, etc.). The Commission may not be able to provide highly accurate estimates.

However, there are opportunities to enhance the way communications occur with users about timeframes. Users should be provided with the means to check the status of their application. Additionally, users should be provided realistic estimated dates for when an application will be assessed, especially if any delay is likely.

Communications about status and delays

Users sought improved communication about delays in the processing of Agreements. Users request the Commission communicate about the status and progress of their application early and often. If significant delays are expected, they wish to be informed of this.

Some users feel hesitant to ‘chase’ information about whether their Agreement has been assessed. They would like to know when and how it is ok to do this. Further, if an applicant demonstrates a pressing need for faster processing, they request the Commission attempt to accommodate this, if appropriate.

Inconsistency of processing times

Some agreements are processed quickly (e.g. within 32 days). Others take much longer. Some users wanted to know why processing times vary and requested greater consistency.

In most instances, the cause of faster processing is the degree of compliance the Agreement has with the law. Agreements which do not require undertakings are processed more efficiently. Processing can be expedited because they do not require additional actions.

The Commission is meeting its target of processing applications within a median of 32 days when applications and agreements meet statutory requirements in the first instance.

However, there may be an opportunity for the Commission to investigate whether expediting applications would be appropriate. Users requested the Commission consider expediting an application if there is a demonstrable pressing need for it.

A sub-process that enables expedited processing is not uncommon in modern organisations. It will usually be supported by strong eligibility criteria and clear communication to applicants. The Commission should consider whether such a sub-process is appropriate.

Recommendations

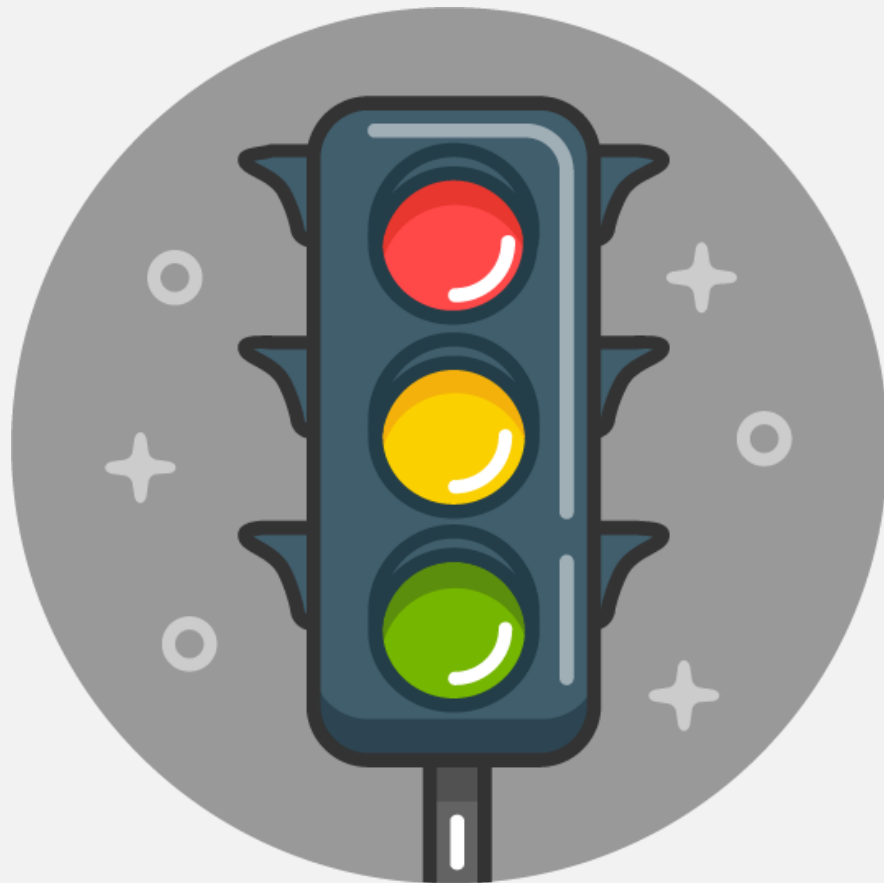
Index	Suggestions	
1	Education materials should be refined and further materials developed so users receive guidance on the level of detail the Commission requires in responses and what attachments should be included.	<p>This action would help increase the likelihood of compliant applications and reduce the need for additional information requests.</p> <p>Refinements and developments might take the form of:</p> <ul style="list-style-type: none">• In-form guiding notes and templates (e.g. a template for comparing agreements to awards)• Supporting/explanatory notes• Guidance materials linked to forms that can provide important updates to requirements as case law evolves more quickly than forms can be updated.• Examples of “compliant” and “non-compliant” applications• A semi-regular updates document that lists frequently occurring application mistakes/issues (and how they are resolved)
2	Develop realistic timeframes.	Although the Commission has publicly acknowledged there have been slower processing speeds than in the past, it would assist users to have realistic timeframes in Agreement processing which reflect changes in the numbers of agreements or evolving case law.
3	Promote more openly that applications approved without undertakings are finalised within 32 days.	This may help encourage users to invest more heavily in ensuring their applications are compliant in the first instance.
4	Consider including a cautionary statement in information materials to complete application forms during the agreement-making process (i.e. don’t leave to the end).	A cautionary note about better practices may help set expectations about the requirements, prompt compliance with the requirements, and encourage users to retain ‘evidence’ for submission with the other application materials.
5	Consider introducing a fast-track stream based on criteria and an application process.	The Commission should consider developing clearly defined and communicated criteria for when a case deserves to be fast-tracked and introducing a process and form to apply for the fast-track.
6	Explore how to keep users informed about changes in the way applications are assessed and what implications this has on submitting applications. Also see suggestions under pre-application.	<p>This action would help increase the likelihood of compliant applications and reduce the need for additional information requests.</p> <p>If a change in case law means applications are going to be assessed more rigorously or additional materials are required, consider options for timely communication of this information to users. This might take the form of:</p> <ul style="list-style-type: none">• A note in the header of the application form• A statement on the Agreements webpage• Incorporation into education materials



Recommendations (cont.)

Index	Suggestions	
7	Consider refining application notifications to provide a general estimate of when applications are likely to be assessed and/or when to expect to next hear from the Commission.	<p>This action will improve the Commission’s communications.</p> <ul style="list-style-type: none">• It may include a statement that explains how long an applicant should wait before seeking an update from the Commission and how they should seek that update.• It may include an estimated timeframe or date range for them to expect to hear from the Commission again.
8	Investigate the viability of proactively contacting applicants if their application will not be processed within the published timelines.	<p>Proactive communication is an admirable practice for organisations seeking to optimise user experiences. However, it can be administratively burdensome. The Commission should consider whether it is necessary and practical within current/expected resource availability.</p>
9	Explore potential for introducing an online status bar that displays an applications progress in the processing queue (e.g. no issues identified from preliminary checks, application awaiting detailed assessment, application currently being assessed, etc.).	<p>This would be a valuable tool for empowering users and preventing user-led contact with the Commission simply to receive a status update. This functionality should be a priority for case management system updates.</p>





Triage &
Assessment

Triage & Assessment



What is this stage?

Users receive notification that their application is being assessed or has been assessed. If an outcome has been determined, users are informed of the outcome. If an outcome is pending, users may be asked for additional information or informed there are issues that may be addressed via undertakings.

Where does this stage fit for users?

This part of the process might happen for users some time after they lodged their application. Users wait for information from the Commission as to whether their Agreement has been approved. Other stakeholders such as employees are also seeking information as to the status of the Agreement.

Why does this stage matter?

The Commission must assess each application on its merits and collect all necessary information to do that. If an agreement or steps taken during the agreement-making process are not compliant, the Commission cannot approve the application.

For users, providing further information requires additional steps to be taken, and places additional burden on parties and the Commission. It is important to make the assessment sub-process as efficient as possible and identify ways to mitigate the need to seek additional information.

Triage & Assessment



What do users think?

Users would like more information about why an undertaking is sought by the Commission and greater guidance on the form of the undertaking itself.

If an undertaking is required, users request the Commission explain why the undertaking is sought, including in relation to evolving case law. This includes informing users about the clause(s) they need to consider & address.

To avoid confusion, many users would prefer a verbal or face-to-face conversation, preferably with a key decision-maker in the Commission, so they can discuss how the award and agreement provisions operate.

Commentary

Users' desire for clear explanation and guidance is understandable and the Commission should explore methods for providing guidance. However, there are some inherent limits on optimisation of user experiences within this step.

Commission staff cannot provide legal advice so, in many instances, cannot dictate specific wording or prescribe specifically what applicants should do. Additionally, Commission staff cannot dictate what terms should appear in Agreements. Similarly, each Member must reach their own conclusion and deal with the matter before them.

Triage & Assessment



Limited explanation of why enquiries and requests for additional materials are made

Users would prefer Commission staff to provide better explanations as to why requests for information are being made. Better explanations will enable the user to respond to the substantive issue and may reduce the number of back and forth interactions.

Confusion about who is making enquiries and requests

Users were unclear about the relationship between the Agreements team and Members. Users are, at times, unsure whether requests received from the Agreement team originated from a Member (and should be treated like a direction) or whether requests originated from staff.

Some users were concerned staff may be acting independently of a Member when seeking additional information and potentially seeking undertakings. In their view, a highly technical approach to assessment is being taken by staff; whereas a Member would have taken a different, lighter-touch approach. This view may be based on their experiences of approval processes prior to the significant evolution of case law.

This indicates the Commission could provide users with greater information about how the Agreements team operates and the relationship between staff and Members. Providing greater clarity would assist users to understand the reasons for queries.

Short timeframes to respond to enquiries

The Commission often sets short turn-around times when asking users to respond to queries. This is based on the

Commission's effort to process the Agreement as quickly as possible. Unfortunately, for some users, short turn-around times and how this has been communicated have been viewed as unreasonable.

The Commission should ensure timeframes attached to queries are articulated in a user-friendly way, particularly if there has been any delay in processing an application.

General user-service complaints

Users sought a greater level of interaction verbally. Many users find the use of email inefficient and ineffective when dealing with complex topics or seeking clarification. They would rather communicate verbally.

Challenging undertakings

Users noted the Commission's wording when conveying requested undertakings seems final. It generates a perception users cannot challenge a request.

The Commission should ensure its correspondence provides users all options available to them under the Act.

Transparency about undertakings in decisions

Frequent users noted agreement approval decisions do not often explain the reasons for undertakings and believe the Commission could be more informative about why an undertaking was required.

Triage & Assessment



Limited explanation why undertakings have been requested and what to do to provide an appropriate undertaking

Users request a clear description about why an undertaking is being sought. If a request is unclear, users find the process of responding to the Commission and crafting an appropriate undertaking difficult and time-consuming. If the request is clear, they can respond to the request and/or craft an appropriate undertaking more efficiently.

Users are seeking specificity in requests for undertakings, including what the issue is and how they should go about addressing the issue.

Pivot notes there is a limit to how far the Commission could reasonably go in meeting users' desire for specificity. It must be balanced with practicality, efficiency, and appropriateness. Further, as a Tribunal, the Commission may be unable to provide a definitive answer as to what undertaking may meet the requirements of the legislation.

Nonetheless, there is merit in exploring if and how more education and guidance could be provided. A greater level of clarity is likely to increase both timeliness and satisfaction for both users and the Commission.

Conferencing versus email exchanges

Users noted they often prefer to directly engage with the Member who has carriage of their matter. Direct engagement was preferable to email exchanges, which could at times lead to greater confusion.

There would be merit in developing business rules or procedures for circumstances when conferencing is used, rather than defaulting to email correspondence.

Volume of Undertakings

Users have noticed there has been a significant increase in the volume of undertakings required by the Commission and seek clarification of why this has occurred.

Pivot notes this reflects the evolving case law, which heavily informs how the Agreement Approval Process must be administered.

Consideration should be given to providing more education for users about the undertakings process as they occur, as well as investigating what, if anything, can be done to inform users about the process and why changes are occurring.

Unnecessary undertaking requests

Some users felt undertakings were, at times, unnecessary. Users believe many requests for undertakings appear to be about an issue that doesn't seem significant in the context of the Agreement.

Pivot notes evolving case law and narrowing discretion in how the Commission approaches undertakings are significant, external factors contributing to these observations.

Undertakings



Consistency of undertakings process, guidance & outcomes

Some users believe the Commission's approach to the development of undertakings can vary. Sometimes, clear guidance and specific explanations are provided. In other cases, users received communications that provided insufficient guidance to address the issue(s).

Some users noted agreements they considered to be almost identical to previous agreements have required different undertakings. Similarly, wording for an undertaking that was accepted in one case is not accepted in another. This is causing confusion amongst users.

Pivot notes the Commission cannot guarantee an agreement will be approved because it was approved in its previous iteration, due to evolving case law and the limited discretion of decision-makers. It would be inappropriate to prescribe a universal approach to undertakings.

However, the Commission should consider what types of guidance can be provided to users to better enable them to meet their statutory obligations.

Process efficiency for management of undertakings

Some users questioned whether the Agreements team should be coordinating undertakings or whether Members (and their associates) were the most appropriate contact point for undertaking requests and queries.

Having the Agreements team coordinate undertakings theoretically reduces operational burden on Members.

However, the Commission should investigate whether it is, in-fact, the most efficient and user-friendly method.

Through a process analysis lens, having staff manage undertakings adds steps and hand-offs (or delegation of activities) to the process that may not be necessary. Each hand-off can result in delays (e.g. a Member outlines required requests for staff to send to users but staff don't access and action this request for 3 days).

Hand-offs are best-suited to uniform, highly repeatable, batchable activities. However, Members have their own preferences for undertakings and practices will vary according to the matter. Consequently, hand-offs in the agreement approval context often require customisation.

Where hand-offs require customisation, the staff actioning the hand-off should be in a close working-relationship with whoever has passed-on the activity. A Member and associate is a good example of this.

Recommendations

Index	Suggestions	
1	Explore if and how more comprehensive explanations of why undertakings are sought/can be provided.	<p>Providing explanation of requests for undertakings may not be as simple as it seems because it must be done appropriately. The Commission should consider exploring with staff and, particularly, Members what an appropriate and well explained request for an undertaking looks like as a first step.</p> <p>A second step would be to develop more and better information materials to educate users on the undertakings process, and the alternatives to undertakings.</p> <p>Ultimately, the Commission should explore the viability of providing users with more explanation of why an undertaking is being requested, focused particularly on defining what the problem to address is including evolving case law. This might include sharing the modelling used in the assessment, a clear statement about the particular clause that’s causing an issue, or a description that clause x is inconsistent with clause y.</p>
2	Explore viability of more clearly outlining what an acceptable undertaking might look like.	<p>This may be a complicated action. The Commission can’t prescribe undertakings. Some research and testing may be required. Some options for providing guidance in an appropriate way might include providing users a list of commonly sought undertakings and examples of how they’ve been successfully addressed.</p>
3	Provide more education/guidance materials on what undertakings are and how to address them.	<p>The Commission and the FWO should consider several methods for doing this, including, but not limited to:</p> <ul style="list-style-type: none">• Refining the existing undertakings guide so its more user friendly• Better promoting the undertakings guide and making it easier to find• Attaching the undertakings guide or including a hyperlink to it when requesting undertakings• Developing additional education resources (e.g. a common undertakings list)• Creating an education outreach program
4	Extend the timeframe for responding to requests to at least one week and explain extensions can be requested.	<p>The Commission should explain responding quickly may result in quicker processing speeds but users have a week to respond to enable them to review, discuss internally and consult relevant stakeholders.</p>
5	Investigate need & viability for a conferencing step in the process for applications with many or complicated undertakings.	<p>The Commission should consider exploring the merit of introducing a sub-step in which users and Members have a brief conference to resolve undertakings issues. Users have a preference for it and back-and-forth emails can be inefficient. However, Member time shouldn’t be consumed by unnecessary conferencing.</p> <p>Consequently, the Commission may consider exploring:</p> <ul style="list-style-type: none">a) If its necessary,b) If its practical/achievable, andc) What it would look like (e.g. what triggers the conference?)



Recommendations (cont.)

Index	Suggestions	
6	Explain the role/functions of the Agreements team to users or refine communications so users understand when requests are coming from staff and from Members.	Clarity about the role, responsibility and process of the Agreements team could address the issue of users being unsure whether Commission staff or Members are requesting information. Actions might include a paragraph and visual diagram describing the role of the Agreements team, highlighting the consultation that occurs with Members. Alternatively, the Commission might revise Agreements team email templates/scripts so that it states something like ‘the Member would like to know’ when a Member has requested information.
7	Consider alternative processes for coordinating undertakings, such as removing responsibility from the Agreements team and into Chambers or allocating Agreements team staff to Members.	<p>The Commission should consider piloting alternative approaches to undertakings management.</p> <p>Consideration should be given to allocating matters to Members/chambers once the assessment has been completed so that chambers are responsible for communications with users about undertakings. It could be applied to all matters so that the Agreements team role is limited to assessments and seeking additional materials from users to complete the assessment. Or, it could be limited to matters that meet a threshold of complexity where it would likely become inefficient for communications with users to be delivered via email to and from the Agreements team.</p> <p>Another option is for staff to be allocated to support 1-2 Members only. Members would know which staff they engage directly with. Staff have the opportunity to adapt to that Member’s preferences/work style and expectations and therefore become highly efficient in supporting it. This allocation could be industry-based and may increase opportunities for staff to pursue opportunities within Chambers in the future.</p> <p>This approach may simultaneously reduce inefficiency by removing the number of steps and hand-offs in the undertaking sub-process and allowing agreements team staff to focus on processing the applications backlog.</p> <p>The proposed options inevitably may have resourcing implications for the Commission to account for in its considerations.</p>





Research methodology
and process

Research Focus



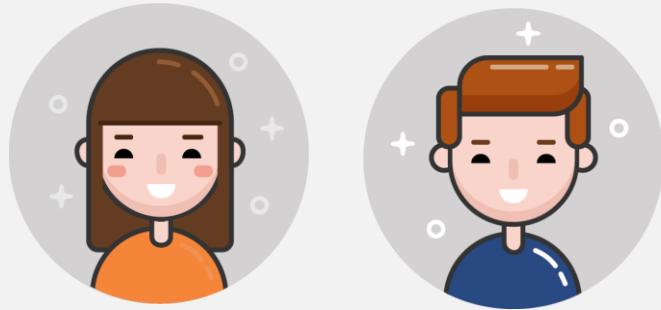
Pivot was engaged to identify what the Commission can do to make the **existing** agreement approval process as efficient and user-friendly as possible. This includes:

- Analysis of how users experience the agreement-making, application and approval process according to experience (i.e. frequent and infrequent users) and industry/sector.
- Identification of users' service delivery expectations and preferences.
- Collection and analysis of users' suggestions for service improvements.

The research was designed to capture specific types of information about the existing process, including:

- **Case management processes and procedures** (i.e. forms, timeframes and other requirements set out in rules , methods of assessing agreements, timeframes, etc.)
- **Communications** throughout the case management process (e.g. correspondence, directions, listing notices, etc.)
- **Information resources** provided by the Commission (and other sources)
- How Commission staff and Members **engage with parties**

Systemic changes that require legislative reform were not within the scope of the research, nor was removing or dramatically re-designing the existing agreement approval process.



The research has been designed to include a diverse range of user views and experiences.

Workshops were held in Sydney (3) and Melbourne (3) and users have been drawn from these locations. Interviews were conducted via telephone.

Frequent users include large employers, employer organisation representatives, unions, private bargaining agents and law firms.

Many infrequent users were approached to participate, although these users were generally less interested in the research than frequent users.

User Characteristics

User insights in this report are based on the views and experiences of 50 users who participated in Sydney and Melbourne workshops and in-depth interviews. Research was conducted in July – August 2018. Characteristics of the research participants include:

User Type

The workshops included a variety of employer, employer organisation, union and private bargaining agent/consultant perspectives; although one of the 6 workshops was focused on union perspectives.

Range of industries

Participants were drawn from an range of industries, including: Health; Transport & rail; Manufacturing; Media, entertainment & the Arts; Waste management; Electrical contracting; Security services; Airline operations; Aged Care; Storage; Food, beverages & tobacco manufacturing. One workshop was dedicated to the Building & Construction industry.

Extent of experience

Most users consulted were experienced. Many have been actively involved in agreement-making for many years and have experience across all elements of the process, from bargaining and development of agreement content to agreement approval and implementation. Perspectives of less-experienced users have been sourced directly via 4 workshop participants and via the feedback shared by their representatives and by unions who have assisted employers to navigate the process.

Skill/Capability

Most participants are sophisticated users who have a comprehensive understanding of industrial relations regulations, capacity to keep up-to-date with evolving case law and agreement approval requirements. Perspectives of less sophisticated users have been reflected in contributions from a small number of less-frequent users and by their representatives.

Impacted by delays

Almost all participants had experienced delays. Some users had had their application ‘fast-tracked’/expedited.

Workshop and Interview Activities

Workshops and in-depth interviews were structured to cover the following subjects:



<i>Introductions & General Reflections</i>	Collecting high-level observations about the process overall. Participants share individual experiences and perspectives in short, semi-structured contributions.
<i>Application Process Insights</i>	Identifying opportunities to improve the application process. Participants share their experience of completing the forms, lodging materials and the communications they receive post-lodgment.
<i>Triage/Assessment Process Insights</i>	Exploring users’ experience of engaging with staff and Members following assessment/triage of the application. Includes insights into timeliness, accessibility, consistency of experience, communications, requirements, etc.
<i>Undertakings & Decision Insights</i>	Exploring users’ experience of outcomes, including how undertakings are developed and agreed to (as required).
<i>Pre-Application Insights</i>	Participants critically analyse the relevance and usefulness of Commission resources that can assist users during the agreement-making process (e.g. education materials, tools, guidance). Participants recommend what the Commission can introduce, remove or amend to assist users.
<i>Summary</i>	Summarising key themes and major insights and recommendations from users (e.g. key pain/gain points, widely agreed-upon or particularly compelling ideas to improve experiences, etc).
<i>Final comments about key priorities (e.g. if you were President for a day...)</i>	

Research Themes

Users were asked to specifically consider these themes:

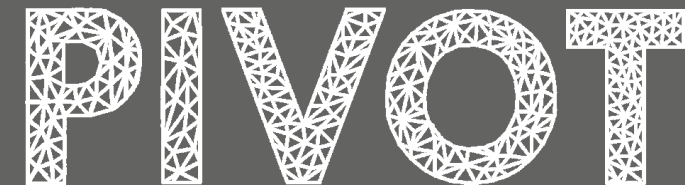
- Timeliness, efficiency, speed
- Accessibility, ease, simplicity
- Support, enablement, assistance
- Responsiveness, consideration, respect



Thank you.

Contact Us

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Disclaimer:

This Final Report has been prepared as outlined in the agreed contract of services. The Final Report provides a summary of Pivot Management Consulting's findings during the course of the work undertaken for the Fair Work Commission. The Final Document does not represent all analysis undertaken or all the information collected from users. All information collected and analysis is included in a separate deliverable provided to the Fair Work Commission.

Pivot Management Consulting has relied on information provided to it by the Fair Work Commission employees and its agents and workshop participants. Pivot has not assured the accuracy of such information.

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