



Agreement approval process user experience report – recommendations and responses

The Pivot Report into user experience with the Fair Work Commission’s agreement approval process identified five key themes:

- Increasingly technical requirements
- Delayed processing & results
- Inadequate education, explanation and guidance
- Communication issues
- Inconsistent processes & outcomes

In its response the Commission grouped the issues into two areas to be addressed:

- **Timeliness and administrative efficiency**
- **Education, assistance and industry engagement**

LEGEND:

- A = Application process insights
- P = Pre-application insights
- T = Triage & assessment insights

Timeliness and administrative efficiency			
<i>The Commission acknowledged that delays in approving agreements, in particular for complex applications requiring follow up after lodgment, was a major frustration for parties in 2018. We successfully implemented several changes to reduce the time taken to deal with applications and to streamline the approval process.</i>			
Recommendation		Response	Outcome
A2	Develop realistic timeframes	The Commission has made a number of changes to the approval process which have resulted in significant reductions in the time taken to approve an enterprise agreement. There has also been a significant improvement in the queue of applications yet to be determined, with a 70% reduction in applications on hand between January and September 2019.	The Commission met its 2018–19 PBS KPI for approving Enterprise agreements without undertakings within a median of 30 days (against a KPI of 32 days). In the first quarter of 2019–20, applications approved without undertakings have been finalised in a median of 24 calendar days with all agreements approved within a median of 42 days.
A3	Promote more openly that applications approved without undertakings are finalised within 32 days.		

Timeliness and administrative efficiency							
Recommendation	Response	Outcome					
	<p>The Commission’s performance has continued to improve in the 2019–20 financial year and we are committed to meeting the following benchmarks:</p> <p><i>Timeliness targets</i></p> <table border="1"> <tr> <td>Timeliness benchmarks: Enterprise Agreements</td> </tr> <tr> <td>50% of simple applications approved in 3 weeks</td> </tr> <tr> <td>100% of simple applications approved in 8 weeks</td> </tr> <tr> <td>50% of complex applications approved in 10 weeks</td> </tr> <tr> <td>100% of complex applications approved in 16 weeks</td> </tr> </table> <p>‘Simple applications’ are those that can be approved based on the material provided at lodgment, without any further action required by the Commission. ‘Complex applications’ require one or more undertakings, are contested or require a hearing; or otherwise require follow up by the Commission to elicit additional information.</p>	Timeliness benchmarks: Enterprise Agreements	50% of simple applications approved in 3 weeks	100% of simple applications approved in 8 weeks	50% of complex applications approved in 10 weeks	100% of complex applications approved in 16 weeks	<p>As at 30 September 2019 our performance against these benchmarks was:</p> <p>Simple applications:</p> <ul style="list-style-type: none"> • 61% in 3 weeks • 95% in 8 weeks <p>Complex applications:</p> <ul style="list-style-type: none"> • 65% in 10 weeks • 80% in 16 weeks
Timeliness benchmarks: Enterprise Agreements							
50% of simple applications approved in 3 weeks							
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100% of complex applications approved in 16 weeks							
T7	<p>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>	<p>From the beginning of 2019, once a matter has been allocated to a Commission Member, correspondence regarding an application, including any requests for undertakings, will come from Chambers. Each Member will deal with applications on a case by case basis and correspond with parties accordingly.</p>	RESOLVED				

Timeliness and administrative efficiency			
Recommendation		Response	Outcome
A5	Consider introducing a fast-track stream based on criteria and an application process.	<p>The Commission encourages and rewards parties who make compliant applications with shorter median processing times. Simple applications approved from July to September 2019 were approved in a median of 17 calendar days against a median for all applications, including those that required undertakings or follow up from the Commission, of 42 calendar days.</p> <p>As outlined above, with the elimination of the backlog of agreements, the timelines targets as set out above and included in material sent to parties at lodgment is an accurate guide. 95% of applications are assessed and allocated to a Member within 2 weeks of lodgment after which parties will be contacted by chambers.</p> <p>Any issues that will need to be addressed by parties and that may impact on the time taken to deal with the matter will be outlined in correspondence from the Member dealing with an application. This will generally be sent within 3 weeks of lodgment.</p> <p>The Agreements in progress page lists all applications to approve and vary an enterprise agreement that are yet to be determined. Additionally, for around 18 months the Commission has provided a “Hot Button” facility on this page which allows parties to email a dedicated address to find out the status of their application and request that an application be expedited if there is a pressing business reason.</p>	<p>RESOLVED</p> <p>By improving timeliness, these issues have also been addressed.</p>
A7	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.		
A8	Investigate the viability of proactively contacting applicants if their application will not be processed within the published timelines		
A9	Explore potential for introducing an online status bar that displays an application’s progress in the processing queue (e.g. no issues identified from preliminary checks, application awaiting detailed assessment, application currently being assessed, etc.).		

Timeliness and administrative efficiency			
Recommendation		Response	Outcome
T4	Extend the timeframe for responding to requests to at least one week and explain extensions can be requested.	A Member will always try to deal with an application in the most efficient way which may include providing relatively short timeframes for responses to ensure the matter can proceed swiftly. At any time, parties may make a request for a conference or an extension to a deadline for submissions.	Each matter is dealt with in the manner best suited to the circumstances of the application.
T5	Investigate need & viability for a conferencing step in the process for applications with many or complicated undertakings.	Members will consider the need for a conference on a case-by-case basis and consider any request made by parties to deal with a matter in a certain way.	

Education, assistance and industry engagement

The Commission has produced additional resources and implemented several projects and changes to better educate and assist parties involved in agreement making

Recommendation		Response	Outcome
T1	Explore if and how more comprehensive explanations of why undertakings are sought/can be provided.	<p>The Commission published the <i>Enterprise agreement making – undertakings document</i> on the Approval Process page on the website. This page has also been updated to include information on drafting and providing undertakings.</p> <p>A link to this material is providing in correspondence to parties when a Member requests an undertaking.</p>	On-going
T2	Explore viability of more clearly outlining what an acceptable undertaking might look like.		
T3	Provide more education/guidance materials on what undertakings are and how to address them.		
A1	The FWO and the Commission should refine education materials and develop supporting education materials so users receive guidance on the level of detail the Commission requires in responses and what attachments should be included.	<p>Depending on the circumstances of the matter, each Member will require different material to be satisfied that pre-approval steps have been met, including whether there was genuine agreement and that the agreement passes the better off overall test (BOOT).</p> <p>The Commission publishes the Single enterprise agreement legislative checklist that is used in the assessment of approval application on our website so parties are aware of the information considered.</p> <p>Appreciating that parties may need more general guidance the Commission is discussing with FWO the possibility of expanding the material available to parties published by both agencies.</p>	

Education, assistance and industry engagement

Recommendation		Response	Outcome
P4	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.	The Commission published a revised Agreements Benchbook in April 2019 which takes into account developments in case law and legislation. The Commission subsequently released a web-based version of the Enterprise Agreements Benchbook to be more accessible.	On-going
A6	Explore how to keep users informed about changes in the way applications are assessed and what implications this has on submitting applications.	<p>The Commission sends Quarterly Practitioner Updates to subscribers outlining key decisions in the previous 3 months in relation to all matter types.</p> <p>Where relevant, the Commission uses the Enterprise agreements decisions subscription service to notify regular users of changes to forms, processes or issues arising from key decision such as the decision in <i>CBI Constructors</i>¹ that related to mandatory timeframes.</p> <p>The Commission provides the following resources on our website:</p> <ul style="list-style-type: none"> • Notice of Employee Representational Rights Guide and Notice Tool (which assists employers to prepare a compliant Notice) 	

¹ *Construction, Forestry, Maritime, Mining and Energy Union and Ors v CBI Constructors Pty Ltd*, [2018] FWCFB 2732, 21 June 2018

Education, assistance and industry engagement

Recommendation		Response	Outcome
		<ul style="list-style-type: none"> • Making a Single Enterprise Agreement – Step by Step Guide (updated 29 July 2019) • Single Enterprise Agreement Date Calculator (which assists parties to comply with the various timeframes when making and lodging an enterprise agreement) • Enterprise Agreements Benchbook (a guide to the legislation and key principles in case law; updated 24 May 2019) • 10 tips for agreement making (a list of tips to assist employers when making and lodging agreements) • Making compliant agreement applications (a detailed guide for parties that outlines some common errors in agreement applications and how to avoid them; published 20 February 2019) • Undertakings guidance material 	
T6	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.	Since the changes made earlier in 2019 (as outlined above) communication regarding an application will come from Chambers. Correspondence from the Agreements Team is limited to administrative request such as requests for outstanding documents.	RESOLVED

Education, assistance and industry engagement

Recommendation		Response	Outcome
P1	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.	A Behavioural Insights (BI) project has commenced which involves researching and analysing the common behaviours of participants to agreement approval applications to better understand and cater to their particular needs in the future.	On-going The BI project will be completed in early 2020
P2	Consult with the FWO to develop better, more targeted education resources for users.	The Commission has provided members of the Agreements User Group with material on agreement making that was tailored to their industry. Similar material has been made available to other parties on request.	
P5	Identify viable education methods the Commission may be able to provide to users or refer them to.	<p>The Commission has published a more general guide to Making compliant agreement applications which provides guidance on the BOOT and National Employment Standards requirements, and lists a number of common mistakes in agreement applications and how they can be avoided.</p> <p>The Commission hosted and streamed the ‘<i>Making compliant agreement applications</i>’ session in May as part of Law Week 2019. The presentation and video of the session are available on the Commission’s website and YouTube channel.</p>	

Education, assistance and industry engagement

Recommendation	Response	Outcome
	<p>More generally in 2018-19 the Commission published or updated the following resources available on the website:</p> <ul style="list-style-type: none"> • Notice of Employee Representational Rights Guide and Notice Tool (which assists employers to prepare a compliant Notice) • Making a Single Enterprise Agreement – Step by Step Guide (updated 29 July 2019) • Single Enterprise Agreement Date Calculator (which assists parties to comply with the various timeframes when making and lodging an enterprise agreement) • Enterprise Agreements Benchbook (a guide to the legislation and key principles in case law; updated 24 May 2019) • 10 tips for agreement making (a list of tips to assist employers when making and lodging agreements) • Making compliant agreement applications (a detailed guide for parties that outlines some common errors in agreement applications and how to avoid them; published 20 February 2019) • Undertakings guidance material 	

Education, assistance and industry engagement

Recommendation		Response	Outcome
P8	Investigate viable methods for disseminating education prior to users commencing the agreement-making process, and prior to application lodgment	While a number of resources are available on the Commission’s website, some users find it difficult to locate those that are relevant to their needs at a particular stage of the agreement making process. The Commission is developing an ‘Agreements Toolkit’ as part of its review of the website which will consolidate all resources in one location.	Smart forms to be released in October 2019
A4	Consider including a cautionary statement in information materials to complete application forms during the agreement-making process (i.e. don’t leave it to the end)	<p>‘Smart form’ versions of the common agreement making forms will shortly be released which will allow parties to complete and lodge forms more easily and to identify potential issues in the application before lodgment.</p> <p>The Commission invited the Agreements User Group to participate in testing of the Smart forms to better capture their needs and take into account their feedback.</p>	
P3	Redesign the Agreements webpages so they are simpler to navigate and prioritise learning.	The Commission is currently working with Behavioural Insights specialists to review the structure of the agreements section of our website. Initially some minor changes have been made to make key resources more visible. More extensive changes will be made following consultation with users.	Commenced; to be finalised by end of 2019

Education, assistance and industry engagement

Recommendation		Response	Outcome
P6	Engage & consult more regularly with users for feedback, exploration of issues and testing of new ideas	<p>The Commission has established an Agreements User Group of frequent users to discuss ideas and key issues in relation to the agreements process. The group has met twice and will continue to meet regularly.</p> <p>Members and staff of the Commission meet with other users including large & small employers and peak bodies, upon request and is currently developing a more structured outreach program. The program will see the Agreements Practice Lead Member contact high volume users and large employers whose agreements are nearing or just passed their nominal expiry date and inviting them to participate in tailored information session.</p>	
P7	Determine how the Commission can provide any additional guidance on the BOOT assessment (e.g. what formula are used).	Developing a prototype loaded rates tool with Deloitte to assist parties who wish to pay employees a loaded rate in compensation for some award entitlements.	A 'proof of concept' has been produced and is currently under review by the Commission.
P9	Consider accepting general enquiry phone calls from users during this stage (e.g. a helpline) rather than directing users to make enquiries via email.	Callers to the Commission's Helpline with technical queries regarding agreement making are forwarded to experienced staff in the agreements team for assistance (noting Commission staff cannot provide legal advice). If an email to the team asks for a call back we call within one business day.	