



Promoting compliance through behavioural insights

A report from the Behavioural Insights Team for the Fair Work
Commission

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01 / Executive Summary

The Behavioural Insights Team (BIT) was engaged by the Fair Work Commission (FWC) in April 2019 to advise on how behavioural insights could be applied to promote compliance with requirements relating to enterprise agreement and unfair dismissal application processes, and to understand whether there were broader ways that the Commission could apply behavioural insights to its operations.

From a behavioural perspective, users making unfair dismissal applications and enterprise agreement applications may encounter some of the same challenges. Firstly, understanding complex legal processes and compliance requirements can be difficult. For those who do not understand, finding more information or answers to questions can present further challenges.

Secondly, people tend to learn and deepen their understanding through repeating experiences. However, the opportunities for feedback and learning are limited because users are usually first-time users (in unfair dismissal cases) or sporadic users (in enterprise agreement applications). These users are more likely to make mistakes because they don't have the opportunity to increase their knowledge through repetition.

In unfair dismissal cases, applicants are often anxious, stressed and confused when they enter the unfair dismissal process. These emotions reduce a person's ability to think clearly and methodically in the way necessary to make a fully compliant application.

In this report, we provide a set of detailed recommendations relating to each of these specific challenges. At a high level, there are also some powerful cross-cutting behavioural strategies that can be used to address these and other compliance issues. For example:

1. Simplification of information can reap substantial benefits, particularly in cases where the source information is highly complex or legalistic.
2. Timely reminders and feedback can prevent some mistakes from being repeated, and prevent others altogether. Timely feedback may be particularly beneficial in the case of enterprise agreements, where applicants may return years later when their current agreement expires, but may not recall the details of the errors made in the previous application process.
3. Underlying system design can itself be a way of facilitating compliance, particularly in unfair dismissals. Channelling applicants towards online

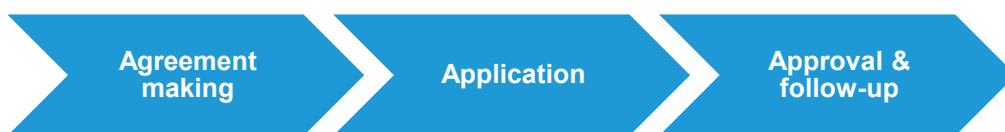
lodgment services (such as the current Online Lodgment Service (OLS) and future 'eCase' system), and away from email and paper-based lodgment channels, can increase compliance.

Agreement applications and non-compliance

Enterprise agreements set out the terms and conditions of employment, as agreed upon between an employer and their employees. Each year, the Commission deals with approximately 5,000 applications for the approval of enterprise agreements under the *Fair Work Act 2009* (Cth). Since 2016, there has been an increase in the proportion of these applications that are non-compliant – either they do not comply with all statutory requirements at the time of lodgment or they have not provided sufficient information to allow the assessment to be made.

Non-compliant applications may require a written undertaking to be given that addresses the identified issues in order to be approved. While preferable to dismissing the application, approving an application with undertakings usually takes longer and is more resource intensive than the process for approval of a compliant agreement. Undertakings are increasingly common, with 68% of applications in 2017-18 requiring at least one undertaking (up from 35% in 2015-16).¹ Consequently, the Commission has taken various steps to increase compliance, including developing a wealth of tools and resources to assist applicants.

To understand non-compliance, we need to look at the process for making an agreement application. The process for making an agreement is complex – it can span many months, requires compliance with strict timeframes, and involves negotiating with numerous stakeholders. If the majority of employees vote to approve the agreement, it can be lodged with the Commission for approval. The activities can be grouped into 3 main stages:



1. **Agreement making:** This stage requires the employer to notify employees of the right to be represented using the Notice of Employee Representational Rights (NERR) within the 14-day time limit (usually when the employer agrees to start bargaining). Parties bargain (or negotiate) the terms of the agreement and then employees vote on the agreement.

¹ Statement of Requirements.

2. **Application:** The applicant and/or employer must complete and lodge the relevant forms (e.g., F16 and F17) and supporting documentation with the Commission for approval.

3. **Approval and follow-up:** During this stage, parties may be asked to respond to requests for information or participation in conferences and hearings.

We have summarised potential behavioural barriers and high-level recommendations in the table below.

	Agreement making	Application	Approval and follow-up
Behavioural barriers	<p>The employer does not complete or record important compliance steps, such as when the Notice of Employee Representational Rights (NERR) was given to employees</p> <p>The applicant does not comply with timeframes</p> <p>The proposed agreement does not include key terms, is not consistent with the National Employment Standards (NES), or does not pass the better off overall test</p>	<p>The forms are incomplete or the Agreement itself is not correctly signed by all relevant parties</p> <p>The information that should have been recorded prior to the application was not submitted</p>	<p>Parties do not respond quickly to the Commission’s requests</p> <p>Parties perceive undertakings as ‘normal’</p> <p>Parties may not recall the issues or errors made in previous applications due to considerable lapse of time between interactions</p>
High level recommendations	<p>Work directly with heavy users to reduce undertakings</p> <p>Provide accessible information about the undertaking process</p>	<p>Make improvements to the website</p> <p>Make improvements to the ‘Making a Single Enterprise Agreement: step by step’ guide</p>	<p>Use tailored communications to provide feedback to applicants</p> <p>Avoid communicating undesirable social norms</p> <p>Increase the personalisation and timeliness of communications</p> <p>Highlight the benefits of submitting compliant applications early in the process</p>

Unfair dismissals and non-compliance

Unfair dismissal applications are by far the most common application received by the Commission, with 13,595 unfair dismissal applications lodged in 2017-18.

There are several behavioural barriers that make it challenging for applicants to lodge on-time and complete unfair dismissal applications. To examine these issues, we mapped the user journey for a potential applicant and the digital ecosystem of relevant web pages (these are available in Appendix 1). In addition, we conducted interviews with FWC staff who deal with applications to get an understanding of the process.

At a high level, the user journey for employees who make an unfair dismissal claim can be summarised as follows:



1. **Discovery and investigation:** After an employee is dismissed, they explore their options, their eligibility to apply, and how to lodge an application.
2. **Preparing an application:** If they decide to apply, applicants need to prepare an application which includes filling out forms about their employment (such as start and end dates) and dismissal (including any reasons given by the employer). This also involves compiling relevant documentation about their employment and dismissal.
3. **Lodgment:** The applicant can lodge an application via various channels (e.g., online lodgment, email, post, or in-person). The legislation specifies applicants must lodge their application within 21 days of their dismissal taking effect. At the time of lodgment, applicants must also pay an application fee or apply for a fee waiver.
4. **Processing and follow-up:** The applicant may be contacted by the Commission to provide additional information or documentation, attend a conciliation or hearing, and in the case of unpaid applications, pay an application fee.

Some of the behavioural barriers that may lead to compliance issues, as well as high-level recommendations for each stage, are summarised in the table below.

Stage	Discovery and Investigation	Preparing an application	Lodgment	Processing and follow-up
Behavioural barriers	<p>Applicants are unaware they can apply, or do not decide to apply, until they are close to or already outside the 21-day timeframe</p> <p>If an applicant is already outside the 21-day timeframe, they may still decide to apply</p> <p>Applicants may not access appropriate information on the FWC site</p>	<p>Applicants do not provide important information, such as employment commencement and termination dates, or the identity of the respondent</p> <p>Format and/or quality of documents provided by Applicants are illegible</p> <p>Applicants have difficulty identifying relevant information to support their application</p>	<p>Applicants do not pay the application fee</p> <p>Applicants lodge multiple versions of the same application</p> <p>Applicants lodge the application late and continue their application without understanding additional obstacles associated with exceptional circumstances</p>	<p>Applicants do not respond to calls or emails from the FWC</p> <p>Applicants who made a telephone application do not complete the application form</p>

High level recommendations	Provide information about jurisdictional requirements and the implications of lodging late as early as possible to aid applicants' decision making about whether to apply	Prompt participants to provide the most important information (e.g., through careful use of mandatory fields and visual indicators)	Guide users towards lodging applications via online systems (e.g. OLS and eCase) as the preferred channel over email	Let applicants schedule the time of contact with FWC and 'manage' their appointment online
	Use vignettes of relevant cases to help manage expectations of applicants	Work with existing behaviours (e.g., provide guidance on how to take acceptable photos of documents)	Add direct debit as a payment option and integrate payment details into the UD application form	Send applicants a reminder message before FWC contact them so they can anticipate the conversation
	Use a date calculator as a 'countdown'	Ensure participants have sufficient guidance on information requirements <i>before</i> they begin the application		Optimise communications (e.g., through stressing the urgency of the application)
	Improve the navigability of the website			Provide 'reply paid' envelopes and 'direct reply' functionality to assist phone applicants in returning their completed form

Our over-arching recommendation is to improve opportunities for, and channel users toward, online lodgment. We acknowledge at the time of this report that the Commission was developing a new case management system ('eCase') that includes online lodgment and fee payment facilities for unfair dismissal applications. The observations in this section of the report are based on our review of the existing system, but are made with the intention that they can be considered in the context of the new system where appropriate. We note that in some instances the new system's enhanced functionality may address some of the issues and recommendations we have outlined herein.

Specifically, we recommend:

- improving the online lodgment experience to enable applicant to save and return to their application
- setting out clearly in advance what information is required to apply
- ensuring wherever there is reference to making an unfair dismissal application or lodgment, a link to the online lodgment is provided as the primary channel for lodging an application (rather than linking to a downloadable copy of the Form F2).

Literature Review: Applying Behavioural Insights in Courts and Tribunals

Alongside the specific challenges identified by the Commission, we have also identified how BI strategies can be applied to improve courts and tribunals at any level, from individual-level nudges to system-level changes. The review in this section approaches problems at 3 different levels of complexity within the court and tribunal system that may be applicable to the work of the Commission:

- 1. Individual-level nudges to increase access to court and tribunal services.** The legal system can be daunting for self-represented users, and complexity may deter people from trying to access the system. However, there are a range of simple methods that can be used to increase access. First, using plain language, and making important information more salient can substantially improve understanding. Second, timely and personalised reminders have been repeatedly shown to increase compliance in a range of domains, and would be particularly suited to increasing court attendance. Thirdly, pre-populating forms and making progress salient can help to improve the quality and rates of completion of applications.
- 2. Individual-level nudges to increase compliance with court and tribunal decisions.** As with access, compliance can often be improved by simplifying information, and by including specific information and a call to action. In addition, providing social norms about high levels of compliance can encourage those in the minority to comply, and changing the way information is framed can be powerful in shifting behaviour (for example, to encourage early guilty pleas, it may help to frame them as the default, and all other guilty pleas become 'late'). Finally, using implementation intentions – asking individuals to actively plan how they will complete an action – has been shown to be effective at increasing compliance.

- 3. System-level changes to increase the efficiency of court and tribunal internal processes.** At a system level, evidence has shown that distributing cases more efficiently – that is, by allowing judges to specialise – can improve court functioning. We note that the Commission is already doing this to some extent, such as by assigning cases by location and in some cases by industry. In addition, reducing the administrative burden on claimants can have positive benefits, as can streamlining alternative dispute resolution methods.

02 / Introduction

Behavioural insights (BI) draws on cognitive science, psychology and behavioural economics to understand the biases and motivations that influence how people think, make decisions and behave. It recognises that humans are not always rational and don't always follow through with intentions. Decisions can be affected by seemingly unconnected things, such as how information is presented or what others are doing.

The goal of BI is to help people make better decisions, whilst maintaining freedom of choice. This is achieved through applying 'nudges' – small changes to existing processes that require little awareness or cognitive effort from the individual.

The attraction of BI to institutions such as the Fair Work Commission (FWC) is its capacity to achieve significant benefits to the community through relatively small, low cost changes to service design. BI has the potential to improve service delivery to the community by helping parties to make informed, timely decisions about their case, particularly where employers and employees are self-represented.

The Behavioural Insights Team (BIT) was engaged by the Commission in April 2019 to advise on how behavioural insights could be applied to promote compliance with requirements relating to enterprise agreement and unfair dismissal application processes, and to understand whether there were broader ways that the Commission could apply behavioural insights to its operations.

Applications for the approval enterprise agreements and unfair dismissal applications are significant case types dealt with by the Commission, directly involving tens of thousands of employers and employees each year and, in the case of enterprise agreements, indirectly affecting many more. Compliance with application requirements can help cases to be dealt with more quickly and efficiently, producing a better experience for parties.

There are several behavioural barriers that make it challenging for applicants to lodge on-time and complete unfair dismissal applications. These include failing to pay the application fee, not lodging sufficient information to progress the application, and not lodging the application within the 21-day timeframe. In the enterprise agreements context, there has been an increase in non-compliant agreement applications (that is, applications assessed as non-compliant at the time of lodgement) submitted to the Commission in recent years. Non-compliant applications may require an undertaking to be given that addresses the identified issues in order to be approved. While preferable to dismissing the application, approving an application with undertakings usually takes longer and is more resource intensive than the process for approval of a compliant agreement. Consequently, the Commission has taken various steps to increase compliance, including developing a wealth of tools and resources

to assist applicants. This project forms part of the Commission's ongoing work in this area.

Behavioural barriers

From a behavioural perspective, users making unfair dismissal applications and enterprise agreement applications may encounter some of the same challenges.

Firstly, understanding complex legal processes and compliance requirements can be difficult. While the Commission has taken substantial steps to provide assistance and support, the specific legal requirements under the *Fair Work Act 2009* (Cth) can still be daunting and for those who do not understand, finding more information or answers to questions can be a further challenge. For example, when preparing an enterprise agreement, an applicant needs to balance the requirements of the National Employment Standards (NES), the specific award, and the business' needs, including reconciling differences for both applicants and respondents with the award and calculating if and how all employees will be better off overall. Similarly, a person applying for unfair dismissal may have difficulty in understanding what information or documentation about their employment and dismissal is relevant to support their case.

These challenges can be exacerbated by the fact that if people are unsure of precisely what to do, there may be significant frictions in finding answers. For example, lengthy or technical documents can be difficult to navigate. In other instances, the information or tool may simply not exist, or it may not be possible for a tribunal to provide what may amount to legal advice and users may be required to undertake the task without guidance – for example, assessment of compliance with the better off overall test requires the exercise of discretion that cannot be reduced to a simple or mechanical formula.

Secondly, people tend to learn and deepen their understanding through repeating experiences.² However, the opportunities for feedback and learning are limited because users are usually first-time users (in unfair dismissal cases) or sporadic users (in enterprise agreement applications). These users are more likely to make mistakes because they don't have the opportunity to increase their knowledge through repetition.

For enterprise agreements – while there are certainly some larger organisations who may build up experience and be well-resourced in the agreements making process (e.g., those who have Human Resources and Industrial Relations expertise), a substantial number of applications come from those who have made relatively fewer applications, or are new to the process. Even those with repeated exposure to the process might only make applications every few years when agreements expire, meaning that lessons

² Smith, J. D., Boomer, J., Zakrzewski, A. C., Roeder, J. L., Church, B. A., & Ashby, F. G. (2014). Deferred feedback sharply dissociates implicit and explicit category learning. *Psychological science*, 25(2), 447-457.

learned from previous experience may have been lost, or may no longer be relevant.

In unfair dismissal cases, applicants are often anxious, stressed and confused when they enter the unfair dismissal process.³ These emotions reduce a person's ability to think clearly and methodically in the way necessary to make an application that is fully compliant.⁴

Behavioural solutions

We have provided detailed recommendations relating to the specific challenges identified in the following sections. However, at a high level, there are also some key behavioural tools that can be used to address these and other compliance issues.

Firstly and perhaps most importantly, simplification of information can reap substantial benefits, particularly in cases where the source information is highly complex or legalistic. Rephrasing complicated information into plain English – an approach the Commission has already embraced – is an effective behaviour change strategy for people of all education levels.

Simplification in this way may also help to address cognitive overload – making information easier to understand and process means individuals need to expend less mental power trying to decipher the message, and can instead focus their efforts on trying to comply with the underlying intent of the communication. This is likely to explain a significant portion of the benefits from simplification - where a complex document might see individuals respond by 'throwing up their hands' in frustration, a simpler document can avoid this and facilitate greater compliance.

Secondly, timely reminders and feedback have been used to address a range of compliance challenges.^{5,6,7} If people are avoiding a task that they perceive is too difficult, a timely reminder may serve as an effective prompt for them to reengage with the task. Similarly, to facilitate learning, it is important to provide detailed and specific feedback about what errors have been made – and most crucially, what the individual can do next time to correct these errors. This is particularly relevant in the case of enterprise agreements, where the applicants

³ Cube Group, *Unfair Dismissal User-Experience Research*

⁴ Brand, A. G. (1985). Hot cognition: Emotions and writing behavior. *Journal of advanced composition*, 5-15.

⁵ Gurol-Urganci, I., de Jongh, T., Vodopivec-Jamsek, V., Atun, R., & Car, J. (2013). Mobile phone messaging reminders for attendance at healthcare appointments. *Cochrane Database Syst Rev*, 12(12), CD007458.

⁶ Finitsis, D. J., Pellowski, J. A., & Johnson, B. T. (2014). Text message intervention designs to promote adherence to antiretroviral therapy (ART): a meta-analysis of randomized controlled trials. *PloS one*, 9(2), e88166.

⁷ Thakkar, J., Kurup, R., Laba, T. L., Santo, K., Thiagalingam, A., Rodgers, A., ... & Chow, C. K. (2016). Mobile telephone text messaging for medication adherence in chronic disease: a metaanalysis. *JAMA internal medicine*, 176(3), 340-349.

may return in a few years once the current agreement expires and may not recall the details of the errors made in the previous application process.

Thirdly and more broadly, underlying system design can itself be a way of facilitating – or inhibiting – compliance.⁸ Whilst it may be challenging, creating a system that effectively ‘designs out’ non-compliance is one of the most effective ways of reducing non-compliant behaviour. This is particularly relevant for unfair dismissals – it is likely that many instances of non-compliance can be significantly reduced or even eliminated simply by channelling applicants away from emailing or lodging a physical version of the form, and towards using the Online Lodgment Service (OLS) (and in time, the new eCase system). An online system such as the OLS allows the Commission to create an environment where certain types of non-compliance are impossible, or at the very least – quite difficult. For example, an online form can make certain fields mandatory, forcing users to complete them before they can advance, though such measures may need to be balanced with access considerations.

Note that these solutions are a high-level summary of the key insights that underpin many of the recommendations in this report. Below we consider the specific challenges and provide more detailed recommendations to address them.

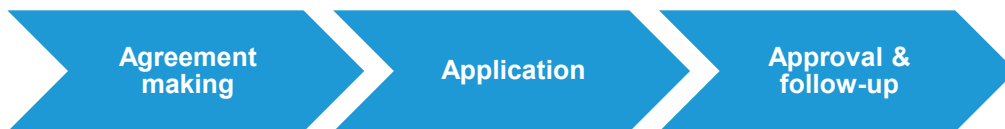
⁸ Armitage, R., & Monchuk, L. (2011). Sustaining the crime reduction impact of designing out crime: Re-evaluating the Secured by Design scheme 10 years on. *Security Journal*, 24(4), 320-343.

03 / Agreement applications and non-compliance

Enterprise agreements set out the terms and conditions of employment (e.g., rates of pay and meal breaks), as agreed upon by an employer and their employees. Each year, the FWC deals with approximately 5,000 applications for the approval of enterprise agreements under the *Fair Work Act 2009* (Cth). Since 2016, there has been an increase in the proportion of these applications that are non-compliant – either they do not comply with all statutory requirements at the time of lodgment or insufficient information has been provided to allow the assessment to be made.

Non-compliant applications may require an undertaking to be given that addresses the identified issues in order to be approved. While preferable to dismissing the application, approving an application with undertakings usually takes longer and is more resource intensive than the process for approval of a compliant agreement. They are also increasingly common, with 68% of applications requiring at least one undertaking in 2017-18 (up from 35% in 2015-16).⁹ Consequently, the Commission has taken various steps to increase compliance, including developing a wealth of tools and resources to assist applicants.

To understand non-compliance, we need to look at the process for making an agreement application. The process for making an agreement is complex – it can span many months, requires compliance with strict timeframes, and involves negotiating with numerous stakeholders. Once the agreement has been voted on by employees it can be lodged with the Commission for approval. The activities can be grouped into 3 main stages, which this section will address in turn:



1. **Agreement making:** This stage requires the employer to notify employees of the right to be represented using the Notice of Employee Representational Rights within the 14-day time limit (usually when the employer agrees to bargain), parties bargain (or negotiate) the terms of agreement and then employees vote on the agreement.

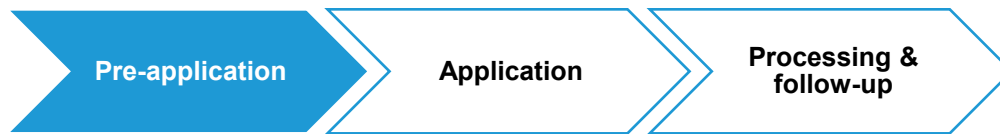
⁹ Statement of Requirements.

2. **Application:** The applicant and/or employer must complete and lodge the relevant forms (e.g., F16 and F17) and supporting documentation.
3. **Approval and follow-up:** During processing and follow-up, all parties may be asked to respond to requests from FWC. These can include requests for information, or participation in conferences and hearings.

We have summarised potential issues at each stage and our high-level recommendations in the table below.

	Agreement making	Application	Approval and follow-up
Behavioural barriers	<p>The employer does not complete or record important compliance steps, such as when the Notice of Employee Representational Rights was given to employees</p> <p>The applicant does not comply with timeframes</p> <p>The proposed agreement does not include key terms, is not consistent with the National Employment Standards, or does not pass the better off overall test</p>	<p>The forms are incomplete or not signed by all relevant parties</p> <p>The information that should have been recorded prior to the application was not submitted</p>	<p>Parties do not respond quickly to FWC requests</p> <p>Parties perceive undertakings as 'normal'</p> <p>Parties may not learn from undertakings</p>
High level recommendations	<p>Work directly with heavy users to reduce undertakings</p> <p>Include applicants from both sides in deciding what key issues are</p>	<p>Make improvements to the website</p> <p>Make improvements to the 'Making a Single Enterprise Agreement: a step by step guide'</p>	<p>Use tailored communications and provide feedback to applicants</p> <p>Avoid communicating undesirable social norms</p> <p>Increase the personalisation and timeliness of communications</p> <p>Highlight the benefits of submitting compliant applications early in the process</p>

3.1 Pre-application



The agreement making process, including the activities that relate directly to compliance with the statutory requirements for approval, takes place before an enterprise agreement application is sent through to the FWC. Differences in industry-based practices at this stage may in turn produce differing levels of compliance between industries.

Data published by FWC indicates that, in 2018, there was significant variation between industries in the proportion of agreement applications assessed as non-complaint on lodgment, and therefore requiring undertakings to be approved. For example, in the aged care industry, just 4% of agreements could be approved without undertakings, while in the building, metal and civil construction industries 63% were approved without undertakings.¹⁰

The FWC asked BIT to explore possible reasons for these differences. To do so, we interviewed 7 applicants (including 2 first time applicants) from a variety of backgrounds including unions, organisations, and consultants.

Broadly, we were unable to identify whether there were specific reasons that some industries had higher levels of compliance compared to others. Our interviews suggested that a variety of reasons led to differing levels of compliance, and these reasons were not necessarily driven by differences in industries.

It is possible that the factors driving inter-industry differences include:

- Industries in which agreement rates of pay are closer to the award may be less likely to pass the Better Off Overall Test (BOOT) at lodgment
- Industries with more experienced or well-resourced applicants or other participants may have higher rates of compliance.

Industries in which agreement rates of pay are closer to the award may be less likely to pass the BOOT at lodgment

One interviewee mentioned that part of the driver around lower compliance may be monetary – industries that had agreements in which rates of pay are closer to the award (such as aged care) may be more likely to have issues because they were more likely to not pass the BOOT without undertakings. Agreements in industries that paid well above the award may be more likely to pass the BOOT. Note, however, that this is a generalisation and may not necessarily be true more widely. It must also be recognised that agreements in

¹⁰ <https://www.fwc.gov.au/documents/documents/factsheets/making-compliant-agreement-applications.pdf>, p. 28.

well paid industries may also have defects that require undertakings relating to the National Employment Standards (NES), non-compliant model terms or that suffer from procedural errors in the bargaining or application process.

The behaviour of a small number of actors may drive inter-industry differences

In general, the overall level of undertakings in some industries may be driven by the behaviour of a small number of actors. This is more likely to be the case for industries that have a small number of organisations involved in multiple agreements, or where a single representative organisation or union is involved across a large number of agreements.

For example, the building and construction industry has relatively high rates of applications approved without undertakings, which can be attributed to the large role a small number of participants play in that industry and the high level of compliance achieved by those participants. This is likely because many terms in those agreements have become standardised – in these cases, the union that lodges or is involved in a high volume of applications has likely learned the lessons after repeated interactions and is able to apply that experience. In other words, the behaviour of a single actor is likely driving a large portion of the industry's compliance. Additionally, industries in which the bargaining process is relatively short can quickly modify their agreements to comply with evolving case law.

Industries with more experienced or well-resourced applicants or other participants may have higher rates of compliance

In general, the overall level of undertakings in some industries may be driven by the extent to which there is specialisation and concentration within an industry.

One large employer noted that they prepare a number of agreements, have a dedicated team with Human Resources or Industrial Relations expertise who are responsible for agreements, and have specialised in-house tools to assist them in preparing applications (for example, to help them compare classifications between the award and the agreement, and to help them calculate whether the agreement would pass the BOOT). The experience of repeated interactions with the agreement approval process may also have allowed lessons to be learned and the approach refined.

For example, the electrical contracting industry has relatively low rates of agreement applications approved without undertakings, however, our understanding is that a representative organisation has been proactively *including* material in agreements that were previously the subject of undertakings. As a result, the proportion of agreements approved without undertakings has increased in the past year from 15% of agreements lodged in 2018 to 33% of agreements lodged in 2019. This improvement has also been aided by the passage of the *Fair Work Amendment (Repeal of 4 Yearly Review and Other Measures) Act 2018* on 12 December 2018 which means the Commission may approve enterprise agreements affected by minor procedural

or technical errors, provided employees were not likely to have been disadvantaged by the errors.

The figures presented in this section suggest that it may be the actors themselves, rather than industry characteristics, which influence compliance, particularly where a single actor or a few large players are involved in a large proportion of agreements and are relatively well-resourced and experienced.

Recommendations

Recommendation 1: Working directly with heavy users may be the most effective way of reducing undertakings

Rather than focusing on industries to improve compliance, it may be more helpful to focus on specific organisations. This is because the organisations that drive a large number of applications may work across multiple industries (such as a large firm with a number of different agreements), or they may be unions or other third-party advisors heavily involved in the process. Hence most efficient use of the Commission's resources is likely to be working with a small number of organisations closely, and making it clear what the best ways to avoid undertakings are.

We note that the Commission has already taken significant steps in this direction through the establishment of its Enterprise Agreement User Group, outreach program and provision of industry-specific information about compliance.

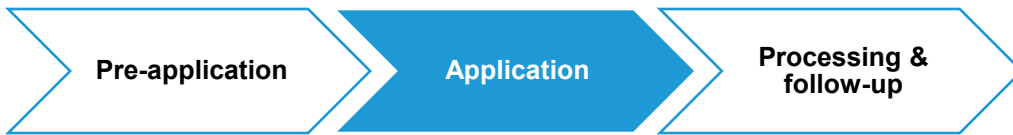
Recommendation 2: Provide accessible information about the undertaking process

Another issue that emerged from our interviews was that changes from the initial agreements were viewed with uncertainty by employees. So, while they may have identified issues that previously required undertakings, incorporating these changes into future agreements was met with resistance. Employees were unsure how the additional terms would benefit them, and so might resist them or demand additional terms in their favour to 'offset' the new terms.

To help educate employees on the undertaking process, the Commission could consider providing information to explain why certain changes are necessary for agreements to be approved and how these changes would benefit employees – employees typically view a government body such as the Commission as an independent, authoritative provider of such information. The nature of the information, and the format, will depend upon the specific changes needed; a first step might be to develop one-page guides or fact sheets for the most common reasons for undertakings. These would explain the nature of the clause to be included, why it is necessary, and note that not including the clause could delay the approval of the agreement.

We acknowledge that information is just one element in promoting compliance. Legal or tribunal processes that involve interpretation of the law and the exercise of discretion often cannot be reduced to a simple or mechanical formula for compliance. But providing accessible, targeted information is an important part of a co-ordinated strategy for promoting compliance.

3.2 Application



During the application process, the parties must complete various forms and submit supporting documentation. This includes completing the F17 (a statutory declaration, to be completed by the employer), and the F16 (an application for approval of an enterprise agreement to be completed by the applicant). Importantly, applicants must provide documented evidence of activities undertaken throughout the process, meaning that pre-application activities are also important during this phase.

We see 2 areas for potential improvement:

3.2.1 Improvements to the website

3.2.2 Improvements to the “Making a single enterprise agreement: step by step guide” document

3.2.1 Improvements to the website

In the same way that our behaviour in the offline world is sensitive to subtle cues from the environment, our behaviour in the online world is shaped by the design and characteristics of the websites we interact with. Online, behavioural biases can be magnified as we make decisions quickly and process vast amounts of information. For the Commission to effectively communicate with potential applicants and other stakeholders, it is important that the website uses strategies from behavioural science – these include reducing the ‘friction costs’ (see Box 1), using simple language, and making important information salient.

The Commission has developed a wealth of resources and tools designed to help applicants who are developing agreement applications. However, making it easier to navigate this section of the Commission’s website could reduce the cognitive resources required of users to find what they’re looking for.

Recommendation 3: Create a centralised guide, document, or website with tiered information

The Commission has developed a large number of resources for potential applicants. However, these are not always easy to find on the existing website, which may prevent applicants from accessing them. The Commission has begun reviewing their website to improve navigation and accessibility of information and resources, including centralising helpful resources under the ‘*Agreements*’ landing page.

It is likely that the website is a potential applicant’s first port of call when they begin searching for information about the agreement-making process. As such,

a redesigned website could serve as a central guide for applicants (the 'Making compliant agreements step by step guide' could also serve this purpose - see Section 2). It needs to be tailored for those that have a very limited understanding of agreements, but it also needs to provide access to information that contains sufficient technical depth to write an agreement application. We have provided recommendations for this below.

Box 1: Friction costs

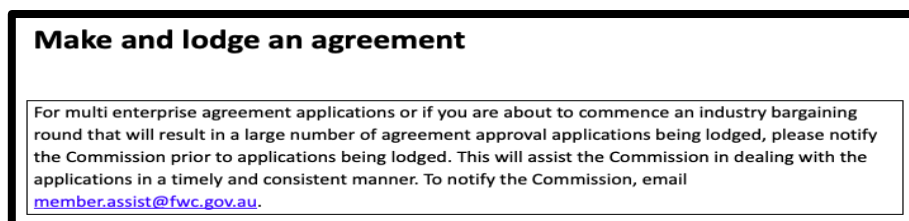
Friction costs refer to small, seemingly minor details that make a task more effortful, and that have a disproportionately large effect on whether people complete a task. For example, directing letter recipients to a website that included a link to a form (instead of linking directly to the relevant form itself) saw lower response rates (23% vs 19%).

Recommendation 4: Make the purpose of each page immediately clear to all users

Users of the website are heterogeneous – they include potential applicants with limited experience, seasoned applicants, those almost ready to lodge an application, and those seeking out information. People in online environments are unlikely to read the whole page – for example, research shows people tend to click on one of the first 3 links while conducting an online search over 70% of the time.¹¹

Consequently, the purpose of each page should be immediately clear to the user. The proposed website does not always make this clear – for example, the first thing a user sees on the proposed 'Make & Lodge an Agreement' page is only relevant to a small subset of users (see Figure 1).

Figure 1: Excerpt from the proposed 'D. Make & Lodge an agreement' page – this note is only relevant to the subset of users engaged in multi-enterprise agreement applications or a large number of applications



¹¹ Competition and Markets Authority (2017). Online search: Consumer and firm behaviour. Report. Retrieved from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/607077/online-search-literature-review-7-april-2017.pdf

Recommendation 5: Guide users through the website, using a centralised guide as a supplement

Applicants have varying degrees of experience in preparing agreement applications, meaning that their information needs differ. This means that the website should provide users with a rapid overview of the process and what they will need, and allow them to access increasingly complex information as they see fit.

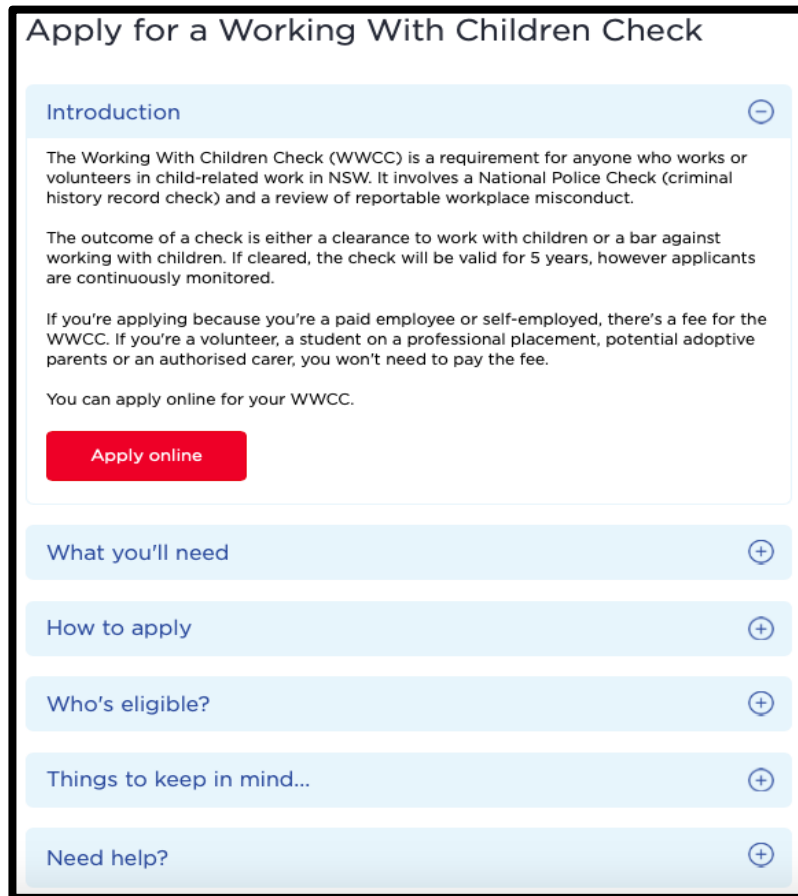
In practice, this could involve using collapsible sections for each of the discrete steps. For example, in Figure 2, we can see that the goal of the page is to encourage users to lodge a Working With Children Check application. Each user can immediately skim the content of the whole page, and is able to access more information (through clicking one of the rectangles) without leaving the initial landing page. This also has the effect of ‘chunking’ information up into smaller pieces – a large volume of information (that might be overwhelming) is broken up into a smaller set of steps, each of which is relatively easy to process (see Box 2).

Box 2: Chunking

Chunking information refers to breaking down a large body of information into smaller pieces or ‘chunks’. In doing so, a large amount of information that might be seen as overwhelming and cause some individuals to disengage, can be broken down into a series of smaller parts or steps. Each individual step or segment of information is more easily understood and processed, and it makes the whole process seem less daunting.

To improve agreement applications on the ‘Make & Lodge an Agreement Application’ page, this page could contain an ‘introduction’, followed by each of the chunked steps, with a ‘call-to-action’ linking the user to the separate page. Each subsection could include a brief description, meaning that users could grasp the process quickly and navigate to relevant pages easily.

Figure 2: an example of guiding users through a process



Recommendation 6: Use analytics to identify what information users are accessing

One of the central themes in behavioural science is that the easier a behaviour is to perform, the more likely people are to do it. In other words, if you want someone to do something, you should make it 'easy'.¹² In practice, this means that it is more practical to make small changes to a process people are already doing than it is to get them to do something new. One way the FWC can incorporate this principle on the website is through identifying what people are already doing, and focusing their efforts there.

The FWC is only one source of information for potential applicants. For example, the Fair Work Ombudsman has a series of fact sheets, and potential applicants may also use other sources such as colleagues, advisors, and internal records. While applicants have previously expressed that some resources (e.g., the NERR template, the Step-by-Step guide) are useful, it is unclear if they are using them.

¹² https://www.bi.team/wp-content/uploads/2015/07/BIT-Publication-EAST_FA_WEB.pdf

Understanding this data will mean that FWC can focus future efforts on updating those documents that users are accessing most regularly. Some of the practical applications for this data are:

- Knowing where to invest resources. For example, if we can see that a large number of people are visiting the website, but not downloading documents, investing resources into the website may be the best use of resources. Similarly, if people are downloading *particular* documents, improving these may be the best use of resources.
- Considering alternative touchpoints. If people are only accessing the website to lodge agreements, FWC should consider alternative touchpoints to communicate with applicants. This could include, for example, the consultative forum, or directly following up with former applicants (e.g., emailing them around the time their agreement is due to expire).

Recommendation 7: Integrate ‘common errors’ into the website

Some common errors that require undertakings – such as defining shift work (even when it’s not relevant for a business) or ensuring the process is documented – may be relatively easy to prevent. Including these on the relevant page may help applicants take steps to prevent them. Importantly, they should use simple language, and should not detract from the flow of the page - this might mean using callout boxes, or examples to illustrate common errors in the text.

Recommendation 8: Re-label resources, and provide a brief description of resources when they are referenced

At present, users are often faced with multiple similarly-named documents. Distinguishing between these documents requires substantial attentional capacity, which increases the ‘cognitive load’ on users (see Box 3). In addition, it assumes that people are actively paying attention and reading through all options before selecting the correct one - which is unlikely in an online environment (where people tend to act quickly, and often rely on heuristics).

Box 3: Cognitive Load

Cognitive load refers to the total amount of mental effort being used in the working memory. Our capacity to perform mental work is a limited resource that can be taken up by planning, remembering, worrying, self-control, and other activities that require our attention. Notably, when under cognitive load, we are more likely to make mistakes and thus poorer decisions. One way of reducing

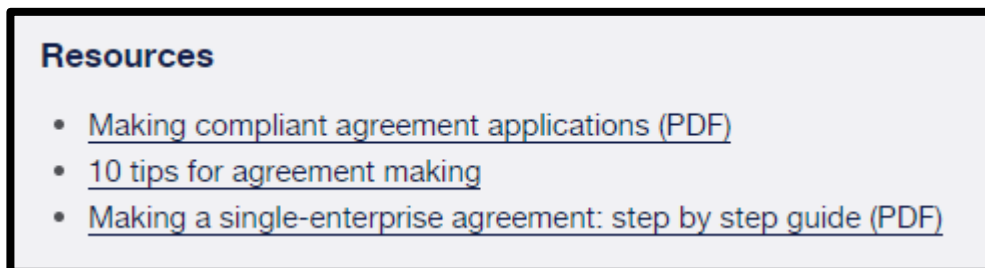
cognitive load is by simplifying information and processes. This could be through drawing the reader's attention to the most important components of a message, or through simplifying language (e.g., simplifying prescription forms reduced the number of errors made by doctors)¹³.

Relevance to FWC: Clearly labelling resources will help users find the right ones. They should also not be similarly named. FWC should use simple language and visual tools to draw users' attention towards important messages (e.g., common errors).

Further, in some instances, even if users are paying attention, selecting the right document may be challenging. Some examples of documents that would be difficult to distinguish between include:

- The 'Making compliant agreement applications' document, as well as the 'Making a single-enterprise agreement: step by step guide' (see Figure 3)
- Two 'checklists' are available, with one entitled the 'Making a single enterprise agreement legislative checklist', and another entitled the 'Checklist for making a Single Enterprise Agreement' (Annexure to the step by step guide).

Figure 3: An example of resources from the current agreements landing page, showing multiple seemingly overlapping documents



Instead, each of the resources should be named clearly. For example, the "Making compliant agreement applications" document could be renamed as "Strategies to increase compliance in agreement applications", while ensuring the name of the "Making a single-enterprise agreement: step by step guide" document remains the same.

Additionally, each resource could contain a short description, and should be located within in a single location. For example, the 'Single enterprise agreement legislative checklist' could include a short description such as 'this document is used internally within the Fair Work Commission as a preliminary tool to help assess whether an agreement is compliant or not. Applicants may

¹³ King, D., Jabbar, A., Charani, E., Bicknell, C., Wu, Z., Miller, G., ... & Darzi, A. (2014). Redesigning the 'choice architecture' of hospital prescription charts: a mixed methods study incorporating in situ simulation testing. *BMJ open*, 4(12), e005473.

find it useful to understand the issues that Commission staff will be focusing on when assessing their applications’.

The most relevant resources, according to users, should be included on the ‘Make and Lodge an Agreement’ page. In this case, we recommend using the Step by Step Guide as the main resource. Applicants should be encouraged to review it first as the primary resource, with other resources playing a secondary or supporting role. The Step by Step Guide could also be used to link to other resources within it, as appropriate.

3.2.2 Improvements to the “Making a single enterprise agreement: step by step guide” document

Above, we have recommended using this guide as the primary resource that applicants are directed towards, with other documents playing a supporting or secondary role. We believe this guide is best placed to serve as a comprehensive summary of the whole process, including what needs to be done at each step.

Recommendation 9: Expand the checklist actions, and provide a summary at the start of each step

Figure 4: Excerpt of current checklist in the guide

Step 1 – Prior to Bargaining

Develop a plan for communicating with your employees

Step 2 – Commence Bargaining

Enter the date of notification
(The date you started, or agreed to start bargaining)

Prepare [Notice](#) and distribute to employees

Enter the date you gave your employees the Notice First Notice:

(As soon as possible and within 14 days from the notification time) Last Notice:

The checklist provided at the end of the document could be made more useful through some simple changes. Importantly, there is an opportunity to use it to guide and shape applicant behaviour, so we recommend including more actions. Essentially, anything where the employer needs to take a specific

action should be broken out as a separate step. This should be reasonably granular – by providing more detail about the specific parts of the process, it is easier to make the required behaviours clearer. Importantly, this has been some of the early feedback that we have received during our calls with users. A number of them have noted that they regularly encounter issues because there are specific things that the FWC requires, but are not specifically listed on the forms or a checklist - for example, documented evidence of how notice of the time and place of the vote was given to the employees, or how the agreement meets the better off overall test (BOOT). Note we recognise that recent changes to the forms and development of smart forms may have addressed some of these concerns.

This is crucial where actions in one step influence another step. For example, in Step 2, employers need to document how they provide the Notice of Employee Representational Rights (often referred to as the Notice or NERR) to their employees. This becomes relevant again in Step 5 (see next recommendation).

In addition, we would suggest including the relevant part of the checklist at the start of each step - this will provide a sense of what to expect, but it also acts as a short summary of the step.

Finally, once this checklist is sufficiently detailed, it could be included as the first part of Form 17, to ensure that all applicants see it and provide sufficient information with their applications. This could be in place of the current 'light-version' checklist that is in the preamble (see Figure 5).

Figure 5: Current checklist on Form F17

Lodgment and service of your completed form

1. **Within 14 calendar days** after the agreement is made, you must lodge with the Commission:
 - This statutory declaration **and**
 - A copy of the notice of employee representational rights (see question 2.4) **and**
 - Copies of any materials provided to employees to notify them of the time and place at which the vote was to occur and the voting method to be used (see question 2.6) **and**
 - Copies of any materials used to explain to employees the terms of the agreement and the effect of those terms (see question 2.7) **and**
 - Copies of any materials used to ensure the explanation was provided in an appropriate manner taking into account the particular circumstances and needs of the relevant employees (see question 2.8).

Box 4: Call-to-action

A **'call-to-action'** is a type of communication that uses simple and clear communication with a specific target or goal. This could include, for example, telling people "You should attach documentation showing that you have informed your employees of their right to vote". While a 'call-to-action' is typically used to prompt immediate action, it should also be used to provide direct instructions to applicants.

Relevance to FWC: The guide and other resources should provide direct instructions to applicants. For example, Form 17 should tell applicants that they should include documentation as to *how* they notified employees of their right to vote.

Recommendation 10: Make links between the sections clearer

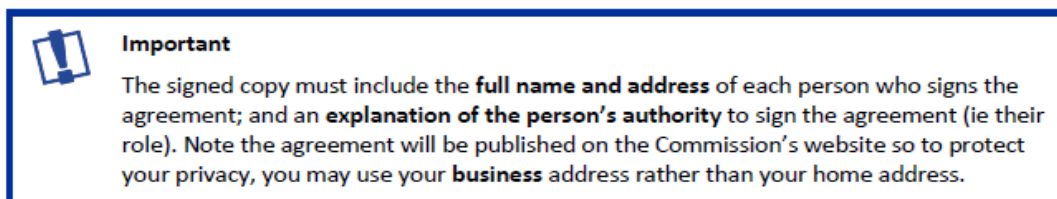
Our understanding is that there are a number of parts of the process where the employer is required to document the actions that they took, to show that they took all reasonable steps. For example, when providing notice about a potential vote to employees, and when providing information about the agreement. Importantly, the need for documentation is only apparent when it comes time for employers to submit information to the Commission, which occurs in a later step. It's possible that an employer that reads this guide may not realise that they were required to document and provide evidence of the actions that they took, which may lead to delays.

Hence, as noted above, we suggest including explicit instructions in the checklist for employers to document actions taken during that step (where relevant). These links between sections should also be made clearer - that is, showing that actions taken in the present step will have ramifications in a later step. Similarly, instructions in later steps can reference those in earlier steps - that is, when submitting information, employers can be reminded that they were instructed to document information about how they provided information to employees.

Recommendation 11: Make salient all the "show-stoppers" that could cause the application to be rejected

There are a number of steps in the process that are mentioned in the guide that essentially are "show-stoppers" - relatively small steps that, if not completed correctly, can cause substantial problems, such as the rejection of the application in its entirety. For example, towards the end, an "Important" callout box is used to highlight the fact that full names and addresses are required on the signed copy of the Agreement (see Figure 6 below).

Figure 6: Example 'Important' box



However, these issues are not always highlighted prominently. For example, in Step 2 (p6), there is a paragraph that states *"If the Notice is not in the prescribed form, and/or it is not provided to some or all employees (because, for example, all reasonable steps were not taken) within 14 days from the notification time, the Agreement cannot be approved by the Commission. The bargaining process will need to recommence with the issue of a valid Notice."* This paragraph is effectively buried in the middle of a large section of text – a critical issue such as this should be highlighted as clearly as possible, using a similar "Important" call out box. This is because people are more likely to respond to stimuli that is salient (see Box 5).

Box 5: Salience

People are more likely to respond to stimuli that are novel, simple, and accessible. This is something that behavioural scientists call salience. In other words, we are more likely to pay attention to something that our attention is drawn towards. Notably, attention is not necessarily drawn towards items of importance – merely items that are salient. Hence, it is crucial to ensure that items that are important are also made salient.

This can be done through using visual tools, such as through changing the colour, size, or shape of certain points. For example, putting a 'Pay Now' stamp on fine notices led to a 3.1 percentage point increase in the number of people paying their fines on time.¹⁴ Other options include using symbols and designs from other areas, such as warning signs or road signs.

Relevance to FWC: Important errors, such as those that will prevent the application from being processed, should be highlighted through using visual tools such as colour, shape, or differently sized text.

In addition, where these issues are called out, they should do 2 additional things. First, they should focus on a relatively narrow aspect or concern - we note that the quote above contains a few different issues (Notice not in prescribed form, not provided to all employees, not within notification time,

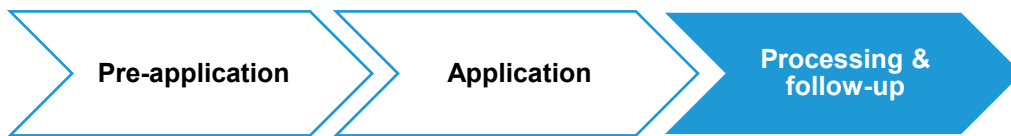
¹⁴ https://www.bi.team/wp-content/uploads/2016/09/BIT_Update_Report_2015-16-.pdf

etc.). In our mark-up, we have split this point into 2 separate callout boxes – one focusing on the prescribed element, and one focusing on the provision to employees. Second, the boxes should also provide clear instructions on how to avoid the issue. For example, in the case of Notices not meeting the prescribed form, we have repeated the link to the Notice Generator.

Note that there may also be other issues that are important, but not necessarily ‘show-stoppers’. These issues might be notable issues that applicants may be unaware of, but failure to account for them will not necessarily lead to the application being rejected outright or needing to be substantially re-written. In these instances, it is helpful to highlight these issues in a manner that is salient, but still less prominent than the ‘show-stoppers’. This might include, for example, using bolded text or a small icon to highlight the issue. In some instances, there may even be benefits to using unique or unusual images as icons, as they can be salient and effective at drawing attention. Indeed, evidence has shown that showing images of typically ‘cute’ objects prior to a task can in fact increase attention to fine details, which may be particularly useful in this context.¹⁵

¹⁵ Nittono, H., Fukushima, M., Yano, A., & Moriya, H. (2012). The power of kawaii: Viewing cute images promotes a careful behavior and narrows attentional focus. *PLoS one*, 7(9), e46362.

3.3 Processing and follow-up



After an application has been submitted to the FWC, parties may be asked to respond to requests from FWC. These can include requests for information, or participation in conferences and hearings. At times, there may be strict timeframes for turnaround on these requests (e.g. 7 days).

The FWC has recently begun providing tailored information to different agreement user groups. Specifically, groups that have lodged, or are associated with, the largest number of agreement applications. Tailored communication represents an area of great promise for FWC, as it increases the likelihood that potential applicants will access the information, and reduces the amount of information applicants need to process.

Recommendation 12: Continue to provide feedback to applicants, and improve the extent to which it is tailored

Communicating directly with applicants may be more appropriate than updating resources, as those who frequently submit applications are unlikely to refer back to resources every time. It also makes sense from a behavioural insights perspective, as people pay more attention to¹⁶ and act upon¹⁷ information that is tailored to them compared to generic information (see Box 6). Additionally, it may help applicants identify errors that are relevant to them. Our interviews, as well as previous research, indicate that those frequently involved in the agreement making process, whether individual applicants or representatives, are not accessing information provided by the FWC (e.g., via the website). It is probable that when information is sent more directly to user groups, they are more likely to access it.

¹⁶ Carmody, D.P., Lewis, M. (2006). Brain activation when hearing one's own and others' names. *Brain Research*, 1116(1), 153-158

¹⁷ Gilbert, H., Sutton, S., Morris, R., Petersen, R., Galton, S., Wu, Q., Parrott, S., & Nazareth, I. (2017). Effectiveness of personalised risk information and taster sessions to increase the uptake of smoking cessation services (Start2quit): A randomised control trial. *The Lancet*, 389(10071), 823-833.

Box 6: Personalisation

We all develop strategies for noting information that may be relevant, and our reaction to names offers a good example. Certain names (like our own) take on significance for us, meaning our attention is drawn to them quickly and effortlessly when they occur. In addition, personalisation helps to distinguish content from generic marketing or spam. For example, in a trial, people who received a text with their name paid more money in a court fine than those who received a generic text message.¹⁸

Relevance to FWC: Personalising communication, such as providing targeted advice to individual applicants or representatives about specific issues that have come up in the applications they have submitted, will help ensure applicants pay attention to the communication. This means they are more likely to act on said advice, and means that the issue is more likely to be addressed in future agreement applications.

Tailoring the information further may help increase both how relevant the information is to the applicant, and how much they engage with the information. Our discussions with users suggest that this is one feature that is particularly relevant and sought after.

Recommendation 13: Be careful to avoid reinforcing undesirable social norms – don't present undertakings as 'normal'

A strong theme that came through from our interviews were that undertakings were perceived as expected or 'normal'. Humans are social creatures; we do not make decisions in a vacuum and our behaviour is shaped by what we see people around us doing. If a behaviour is perceived as 'normal' (that is, most people do it), or desirable (that is, most people think you should do it), people are more likely to do that behaviour. These are called 'social norms' (see Box 7). This means that when a desirable behaviour is common, it should be communicated to the target population. Conversely, when an undesirable behaviour is common, communicating it may increase the incidence of said undesirable behaviour.

¹⁸http://38r8om2xjhhl25mw24492dir.wpengine.netdna-cdn.com/wp-content/uploads/2015/07/BIT_FraudErrorDebt_accessible.pdf

Box 7: Social Norms

In general, the behaviour of other people influences our own behaviour through communicating 2 kinds of **social norms**: norms about the way most people behave in a particular situation (*descriptive norms*) and norms about what the socially desirable or approved way of behaving is in a particular situation (*injunctive norms*).¹⁹ Both of these norms affect our behaviour, as we are more likely to behave in a way we believe others think we do, or ought to, behave. Social norm interventions – that is, communicating a desirable norm (e.g., ‘9 out of 10 people pay their tax on time’) – have improved compliance in other areas.²⁰

Relevance to FWC: Reducing communication of undesirable social norms may help alter applicants’ perception that undertakings are ‘normal’. Increasing communication of positive behavioural norms (e.g., if most applicants are taking steps to reduce undertakings) may help increase compliance.

At present, the communications that the FWC send to different agreement user groups identifies the percentage of applications that are accepted without undertakings. In some instances, this is very low (e.g., in the aged care industry, only 4% of applications are accepted without undertakings - see Figure 7). In communicating that only a small number of applications are accepted without undertakings, FWC is telling applicants that it is ‘normal’ or ‘expected’ that applications require undertakings. This may heighten many applicants’ tendency to assume that undertakings are unavoidable, leading to them perhaps taking less effort to avoid undertakings in the first instance.

One strategy FWC could use would be to communicate desirable norms. This could include, for example, the proportion of applicants who take specific steps to reduce the likelihood of undertakings (assuming this number is high). Alternatively, if the number of compliant applications is increasing,²¹ communicating this may increase the number of compliant applications. For example, through saying “the number of people submitting compliant applications is increasing each month”.²²

¹⁹ Cialdini, R. B., Reno, R. R., & Kallgren, C. A. (1990). A focus theory of normative conduct: Recycling the concept of norms to reduce littering in public places.

²⁰ Onu, D., & Oats, L. (2014). Social norms and tax compliance. *Tax Administration Research Centre (Discussion Paper: 006-14)*.

²¹ This is called “dynamic social norms”. It is particularly useful when only a minority of people undertake a desirable behaviour, but this number is increasing. For example, it reduced the number of people ordering meals containing meat. See Sparkman, G., & Walton, G. M. (2017). Dynamic norms promote sustainable behavior, even if it is counternormative. *Psychological science*, 28(11), 1663-1674.

²² Importantly, this will only work if applicants have the capacity to submit compliant applications. One strategy would be to use this to direct people to a simple behavioural tool. For example “More people are submitting compliant applications each month - use this checklist to become one of these people”

Figure 7: An excerpt of feedback provided to an agreement user group.

Your industries:

Industry	Number of applications*	% approved without undertakings
Aged care industry	168	4%
Building, metal and civil construction industries	1182	63%
Cement and concrete products	50	18%
Manufacturing and associated industries	546	17%
Quarrying industry	21	24%
Mining industry	42	7%
Storage services	117	15%
Waste management industry	45	16%

Note that for every industry except the 'Building, metal, and civil construction industry' the social norms that are communicated are undesirable.

Recommendation 14: Increase the personalisation and timeliness of communications

We respond more to tailored and personalised communications. This includes, for example, communications that include our name or provide feedback on our individual performance. To our knowledge, FWC communications with individuals are limited to the process of dealing with issues arising in their application. Providing personalised feedback or 'tips' to individuals, based on previous undertakings they've had to deal with, may reduce the likelihood of undertakings.

Additionally, applicants who have just had an application approved are unlikely to be thinking about how to reduce undertakings in the future – particularly as most employers will only be involved in one application every 3-4 years. This is because of our tendency to overweight immediate benefits relative to long term costs (this is called present bias, see Box 8). To help overcome this, FWC could provide more specific feedback on issues that have resulted in undertakings for individual applicants, or provide tips on how to overcome previous undertakings at timely moments, such as when an applicant's agreement is about to expire.

Box 8: Present bias

Present bias refers to our tendency to overweight short-term benefits relative to long term costs. It drives many of our behaviours, such as inadequate savings for retirement, or eating unhealthy food. Specifically, a ‘smaller-sooner’ reward (e.g., a chocolate bar) is chosen over a ‘larger-later’ reward (e.g., losing weight).

In the instance of enterprise agreements, for those applicants who do not frequently lodge applications, the effort required to develop a solution that could prevent an undertaking in the future may outweigh the future benefits, as the benefits are perceived to be more abstract. This means they may forget how to prevent the undertaking the next time they lodge an application.

Recommendation 15: Highlight the benefits to applicants of submitting compliant applications early in the application process, and again upon submission

At present, the FWC does not highlight that approval timeframes for non-compliant applications are much longer early in the process. For example, the timeframe benchmarks for non-compliant applications are twice as long for compliant applications, and this isn’t highlighted on the website until users visit the ‘Approvals in Progress’ page.²³ As the time it takes for an agreement application to get approved is something that applicants care about,²⁴ highlighting the increase in time early in a guide could be a useful tool for motivating users to do their best to submit a compliant application.

²³ https://www.fwc.gov.au/awards-and-agreements/agreements/agreements-progress?items_per_page=50&%3Bamp%3Bpage=11&%3Bamp%3Bamp%3Bpage=11&%3Bamp%3Border=MATTER_NO&%3Bamp%3Bsort=asc&%3Border=Industry&%3Bsort=asc&MATTER_NO=&MEDIUM_TITLE=&Industry=&order=REGN_DATE&sort=desc&page=12

²⁴ Pivot Management Consulting. (2018). Agreement Approval Services User Experience Research.

Box 9: Incentives

Incentivisation is an important tool at the disposal of individuals and policymakers to influence behaviour. If large enough, incentives may also induce a sense of desire within the participant for the promised reward. Other work has suggested that regardless of the magnitude of the reward, incentives are effective because of our inherent motivation to avoid losses (i.e. once promised a reward, a failure to enact results in the psychological loss of that reward).

At present, there is one clear incentive for applicants to submit compliant forms: their applications will be processed faster. However, this is not communicated clearly to them until late in the process.

Relevance to FWC: Highlighting the benefits to applicants early in the process, as well as during key intervals (e.g., before lodgment) may help motivate compliance.

04 / Unfair dismissal applications and non-compliance

Unfair dismissal applications are by far the most common application received by the Commission, with 13,595 unfair dismissal applications lodged in 2017-18. An employee may lodge an application following dismissal if they believe they have been dismissed in a way that was harsh, unjust, or unreasonable.

There are several behavioural barriers that make it challenging for applicants to lodge on-time and complete unfair dismissal applications. To examine these issues, we mapped the user journey for a potential applicant, and also mapped the digital ecosystem of relevant web pages. The full user-journey and map of the digital ecosystem are available in Appendix 1. In addition, we conducted interviews with FWC staff who deal with applications to get an understanding of the process.

At a high level, the user journey for employees who make an unfair dismissal claim can be summarised as follows:



Some of the activities for each stage are:

1. **Discovery and investigation:** After an employee is dismissed, they must explore their options to lodge an unfair dismissal application, determine their eligibility, and research how to lodge an application. This could be through an online search, where they will need to find the FWC website.
2. **Preparing an application:** If they decide to apply, applicants need to prepare an application. This process includes identifying important information (e.g., employment start and end dates), filling out forms about their employment and dismissal (including any reasons for dismissal given by the employer), and compiling relevant documentation.
3. **Lodgment:** The applicant can lodge an application via various channels (e.g., online lodgment, email, in-person, or by post). At the time of lodgment applicants must pay an application fee or apply for a fee waiver. Importantly, the law provides that applications must be made within 21 days of the employee's dismissal taking effect, unless

the Commission grants an extension because exceptional circumstances apply.

4. **Processing and follow-up:** The applicant may be contacted by the Commission to provide additional information or documentation, attend a conciliation or hearing, and in the case of unpaid applications, pay an application fee.

The aim of the present section is to provide recommendations to increase compliance in the unfair dismissals application process. Some of the barriers applicants face during each stage are shown in the table below, along with a high level summary of our recommendations.

Stage	Discovery and Investigation	Preparing an application	Lodgment	Processing and follow-up
Behavioural barriers	<p>Applicants are unaware they can apply, or do not decide to apply, until they are close to or already outside the 21-day timeframe</p> <p>If an applicant is already outside the 21-day timeframe, they may still decide to apply</p> <p>Applicants may not access appropriate information on the FWC site</p>	<p>Applicants do not provide important information, such as employment commencement and termination dates, or the identity of the respondent</p> <p>Format and/or quality of documents provided by Applicants are illegible</p> <p>Applicants have difficulty identifying relevant information to support their application</p>	<p>Applicants do not pay the application fee</p> <p>Applicants lodge multiple versions of the same application</p> <p>Applicants lodge the application late and continue their application without understanding additional obstacles associated with exceptional circumstances</p>	<p>Applicants do not respond to calls or emails from the FWC</p> <p>Applicants who made a telephone application do not complete the application form</p>

High level recommendations	Provide information about jurisdictional requirements and the implications of lodging late as early as possible to aid applicants' decision making about whether to apply	Prompt participants to provide the most important information (e.g., through careful use of mandatory fields and visual indicators)	Guide users towards lodging applications via online systems (e.g. OLS and eCase) as the preferred channel over email	Let applicants schedule the time of contact with FWC and 'manage' their appointment online
	Use vignettes of relevant cases to help manage expectations of applicants	Work with existing behaviours (e.g., provide guidance on how to take acceptable photos of documents)	Add direct debit as a payment option and integrate payment details into the UD application form	Send applicants a reminder message before FWC contact them so they can anticipate the conversation
	Use a date calculator as a 'countdown'	Ensure participants have sufficient guidance on information requirements <i>before</i> they begin the application		Optimise communications (e.g., through stressing the urgency of the application)
	Improve the navigability of the website			Provide 'reply paid' envelopes and 'direct reply' functionality to assist phone applicants in returning their completed form

Below, we will provide recommendations to reduce these drivers of non-compliance, beginning with those that span the whole process to more stage-specific behaviours.

4.1 End-to-end process



Our key recommendation across the whole process is to improve opportunities for, and channel users toward, online lodgment. Many of the behavioural challenges discussed in the following sections could be mitigated or eliminated by making system changes to account for individual behaviour. If users are channelled into online systems that FWC can control and adjust it will be much easier to shape and influence their behaviour. For example, it is much easier to enforce compliance by creating an online form that will not submit unless key fields are filled in than it is to prompt people to fill in all fields voluntarily.

The Commission currently provides for online lodgment through its Online Lodgment System (OLS). During the time this report was being prepared, FWC was developing a new case management system (eCase) that includes online lodgment and fee payment facilities for unfair dismissal applications. The observations in this section of the report are based on our review of the existing system, but are made with the intention that they can be considered in the context of the new system, where appropriate; we note in some instances the new system's enhanced functionality may address some of these issues.

FWC staff identified email as the most common method of unfair dismissal lodgment. This suggests that most people are able and willing to provide information online (indeed, they may very well be expressing a clear *preference* to do so). We believe that if online lodgment was made more user-friendly and more prominent on the FWC website, many more users would lodge through this channel, subsequently reducing the likelihood of compliance related issues. For example, FWC staff highlighted that unpaid applications were a common issue, particularly for those that were lodged via email. In line with Payment Card Industry Data Security Standards²⁵, the Commission is not able to capture, transmit or store credit card information via email unless the email can be encrypted. As such, applicants wishing to pay by credit card must provide a phone number in their application form so that a staff member from the Commission can contact them and obtain payment over the phone, which can be a cumbersome process. However, it is possible to make secure credit card payments via online systems, so encouraging greater use of online lodgment would likely reduce the proportion of unpaid applications.

There are 2 key aspects to this:

- 4.1.1 Improving the online lodgment experience, and
- 4.1.2 Making online lodgment more prominent on the website.

²⁵ https://www.pcisecuritystandards.org/documents/PCI_DSS_v3-2-1.pdf?agreement=true&time=1567550883066

4.1.1 Improving the online lodgment experience

Recommendation 16: Let users **save and return to** applications

A standard feature on almost all online application systems is to allow applications to be saved and returned to. The current OLS system does not enable this, with the form only allowing 20 minutes of inactivity before timing out. The short time available to provide information could be a frustration for users – especially since the volume of information required can be substantial – and may discourage use of the system.

Recommendation 17: Inform users in advance of what they need

Importantly, it is not immediately obvious what information will be required before lodging an application. Currently, if a user comes to the OLS page, and sees the recommendation to have ‘all their documents in order’, it is not obvious what this entails. To find out, a user would need to know that they need to click to either the Forms page or the Unfair Dismissals page, and then download the relevant form, and only then would it be clear what information they need to provide. It is likely that most users are unaware of what information they will need, and indeed they are likely unaware of where they might even find this information. Giving users the ability to view the form, enter some information, and then return later with more information, will encourage greater use of online lodgment.

4.1.2 Making online lodgment more prominent on the website

Recommendation 18: Include a hyperlink to the online lodgment whenever there is a reference to an unfair dismissal application or lodgment

The Commission should ensure that wherever there is a reference to making an unfair dismissal application or lodgment, online lodgment is hyperlinked. Currently, in key spaces on the FWC website, such as the Termination of Employment or Unfair Dismissal pages, or the Eligibility Quiz, there is no direct pathway that lets users begin their online application. Our investigation revealed that – controlling for the OLS link, which is nested in the third level of content in the menu – there were only 2 direct links to lodging online: one embedded in the Unfair Dismissal Application Form (F2), the other as a hyperlinked text in the Lodge an Application webpage. This means that users must move through multiple pages, trying various links, until they find the correct one which takes them to the OLS.

Recommendation 19: Improve the navigability of the website

While we were reviewing the causes of the behaviours, we conducted a persona-based user journey to understand the online process. We found that the user encounters various challenges on the website. This may mean they do not find the OLS – they either may not be able to find it at all, or may grow frustrated and give up. Our findings and recommendations in this area are outlined in full in the next section.

4.2 Discovery and investigation



This stage refers to the early parts of the user journey when considering and researching a potential unfair dismissal application. There are 4 key issues at this stage:

- 4.2.1 Applicants are unaware they can apply, or do not decide to apply, until they are close to or already outside the 21-day timeframe
- 4.2.2 If an applicant is already outside the 21-day timeframe, they may still decide to apply
- 4.2.3 Applicants may not understand what constitutes 'exceptional circumstances' and the additional obstacles associated with lodging outside the 21-day timeframe
- 4.2.4 Applicants may not access appropriate information on the FWC site

4.2.1 Applicants are unaware they can apply, or do not decide to apply, until they are close to or already outside the 21-day timeframe

Applicants who lodge late may do so because they were not aware that they could make an application. In line with this, we understand that the primary piece of communication that employees consistently receive from the Fair Work Ombudsman is the Information Statement provided upon commencing employment. While the Information Statement highlights that unfair dismissal applications must be lodged within 21 days of the dismissal taking effect, many employees will have likely been in their current position for months or years before they are dismissed. Given this, employees will have likely forgotten about this specific content.

In addition, applicants are often anxious, stressed and confused when they enter the unfair dismissal process immediately after losing their job, especially for first-time and self-represented applicants who may not understand the employment relations system.²⁶ At the same time, applicants may have other competing priorities, such as managing finances or finding new employment, meaning that, even if they intend to lodge an unfair dismissal application, they may not begin searching for information immediately.

4.2.2 If an applicant is already outside the 21-day timeframe, they may still decide to apply

The legislation provides that the FWC may allow an extension of time for an application to be made if it is satisfied that there are exceptional circumstances. For this reason, if an applicant is outside of the 21-day

²⁶ Cube Group, *Unfair Dismissal User-Experience Research*

timeframe, their understanding of the exceptional circumstances requirement may influence their decision to apply.

An employer can object to an application if they believe the FWC does not have the jurisdiction to deal with an unfair dismissal application (e.g. when an application is lodged outside the 21-day timeframe, the minimum employment period is not met, etc.). In 2017-18, the Commission heard 268 matters in which one or more objections were raised by the employer. Of those matters, approximately 38% (103 matters) were objections related to the timeliness of the employee's application. The Commission granted the employee an extension of time to lodge the application in around 22% of cases (23 matters).²⁷

Applications not dealt with through a jurisdictional hearing may go to conciliation to explore if they can be resolved by agreement. User research indicates employer and employee typically want to avoid having their matter determined through a hearing process. Resolving matters at the point of conciliation can mean both parties avoid the stress and effort needed to prepare and participate in a hearing.²⁸

Recommendation 20: Provide information about jurisdictional requirements and the implications of lodging late as early as possible to aid applicants' decision making about whether to apply

Inform applicants about jurisdictional requirements (for example, the requirement to lodge within 21 days of dismissal), tribunal processes and data on the range of potential outcomes as early as possible (for example, via the Eligibility Quiz) to create proximity to the decision about whether to make an application.

4.2.3 Applicants may not understand what constitutes 'exceptional circumstances' and the additional obstacles associated with lodging outside the 21-day timeframe

Applicants that lodge an unfair dismissal application outside of the 21-day timeframe may still have their case heard if the Commission is satisfied that the delay was due to 'exceptional circumstances'. However, our interviews with FWC staff suggested that the framing of 'exceptional circumstances' in the *Fair Work Act 2009* (Cth) poses a challenge for applicants trying to understand whether their case satisfies the legal threshold.

This may be because of 'optimism bias', with applicants believing that having their case dismissed 'won't happen to me'. However, being unfairly dismissed from their job itself is likely to be perceived as 'exceptional' from the perspective of each individual (particularly as many employees may have never been dismissed before).

²⁷ Fair Work Commission Annual Report 2017-18

²⁸ Cube Group, *Unfair Dismissal User-Experience Research*

This certainty in the merits of their own case may also be exacerbated by the ‘sunk cost fallacy’ (see Box 10). This means that practical outcomes should be communicated early in the process to help manage people’s expectations.

Recommendation 21: Using vignettes of relevant cases during the application process may help manage expectations of applicants

One strategy to minimise ambiguity would be to include simplified case studies of what does (and does not) constitute ‘exceptional circumstances’. This should occur early in the process – even before an application is submitted. For example, on the FWC website, potential applicants who are assessing their eligibility are directed to the ‘Unfair dismissals benchbook’ if they want more information about what constitutes ‘exceptional circumstances’, however, this detailed material may be difficult to understand for some users.²⁹

Instead, identifying any commonalities amongst applications that are *not* granted an extension of time, and communicating this to applicants may be appropriate.³⁰ For example, if ‘ignorance of timeframes’ is commonly listed as a reason, but the extension is rarely granted, including a vignette highlighting that this reason is rarely considered ‘exceptional circumstances’ may help inform applicants of this.

Box 10: The Sunk Cost Fallacy

The **sunk cost** fallacy refers to the fact that we are often influenced by past, ‘sunk’ costs which are irretrievable and have no bearing on future outcomes but which continue to distort our decisions.³¹ In the instance of unfair dismissal applications, this means that once people have been through the application process (and invested time and money), they may be less likely to withdraw their application, even if their chances of success are low.

²⁹ We note that they are not directed to the relevant section of the benchbook - rather they are directed to choose between downloading the PDF version, which is over 200 pages long, or the online page, which includes over 80 links (none of which refer to ‘exceptional circumstances’).

<https://www.fwc.gov.au/termination-of-employment/unfair-dismissal/eligibility>

³⁰ We understand that applicants who are completing the eligibility quiz are also directed to the ‘extension of time for lodging an application’ page, and that this includes some case examples. While this is more readable than the benchbook, the language included in these case examples is still legalistic. It also directs users away from the goal of applying. Additionally, for specific examples, the user must scroll to the bottom of the page.

<https://www.fwc.gov.au/unfair-dismissals-benchbook/making-application/extension-time-lodging-application>

³¹ Arker, H. and C.Blumer (1985), “The Psychology of Sunk Cost”, *Organizational Behavior and Human Decision Making Processes* 35(1): 124-40.

Relevance to FWC: To prevent the sunk cost fallacy, FWC should ensure that applicants are aware of outcomes *before* they have invested substantial resources. This could include during the application process, or reiterating this when the application is being dealt with by client services.

The use of vignettes would provide a source of reality testing for applicants to help them make an informed decision about the best course of action for them – to apply, or not apply. Our interviews indicated that those working in conciliation were helping to manage client expectations using a similar strategy.³² That is, they were telling applicants about the outcomes of cases that had similar circumstances to the applicant’s case.

Recommendation 22: Use a date calculator as a ‘countdown’

As applicants may not begin searching for information immediately following their dismissal, it is important that the legislative timeframes for lodgment are highlighted to potential applicants as early as possible. The Commission is exploring the capability to implement a date calculator within the eCase system to enable applicants to identify whether they are within the 21-day timeframe.

To increase the efficacy of the calculator, we recommend implementing it as a ‘countdown’ that alerts users to the remaining time they have left to apply. Countdowns are commonly used to prompt people to take action by operating on their ‘scarcity bias’ (see Box 11).

Box 11: Scarcity Bias

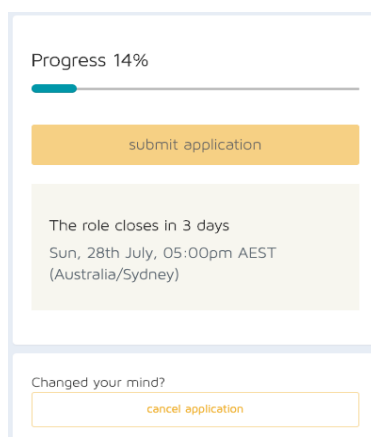
Scarcity bias refers to people's tendency to assume things that are scarce are valuable. For example, when we’re told a product is in short supply (e.g., there are “*only 2 left*”) we are more likely to buy it now.

Relevance to FWC: Using a countdown will highlight to applicants that their opportunity to apply is ‘scarce’, and that they might ‘miss out’ if they don’t act soon.

Other interfaces use visual tools to make upcoming deadlines more salient to a user and act like a ‘countdown’ or reminder. For example, the [Applied](#) job application interface highlights the date and time a role closes (see [Figure 8](#)). Notably, it also highlights the applicant’s progress, which may help them estimate how long their application will take. A similar strategy could be used in a future iteration of the online unfair dismissal application process.

³² Interviews with FWC staff

Figure 8: The 'Applied' job application interface highlights how much time is left (i.e. '3 days'), while providing a progress bar



The FWC countdown should provide automatically updating and personalised information. While we suggest that it is embedded in the application process, an alternative would be to send applicants email reminders (e.g. “*You have 4 days left to lodge your unfair dismissal application*”). These could be offered to users once they had entered their details into the calculator – for example, the results page might include a prompt for the potential applicant to enter their mobile number or email address to ‘opt-in’ to receiving automated SMS or email reminders about the deadline.

This tool would also provide salient information to potential applicants (including those already outside the 21 day time limit) about the implications (late applications can only proceed in exceptional circumstances) under the *Fair Work Act 2009* (Cth) of failing to lodge an application within the 21-day timeframe.

4.2.4 Applicants may not be able to find relevant information on the FWC site

As well as mapping the digital ecosystem of the unfair dismissal process, we also performed a persona-based user journey (see Appendix 1) to understand more experiential elements of the online process. We have compiled the major themes together – Navigation, Content, Pathway, and Technical themes – along with some insights and recommendations that we hope will be of benefit to the Commission to improve the overall experience of applying for an unfair dismissal.

To address these issues, we have 4 sets of recommendations:

- 4.2.5 Improve the information architecture of the website
- 4.2.6 Improve readability of content
- 4.2.7 Improve pathways
- 4.2.8 Improve technical issues

4.2.5 Improve the information architecture of the website

The information architecture of the FWC site makes it difficult for users to find relevant information and complete tasks in a logical, linear way. The arrangement and hierarchy of content makes it challenging to understand how the online environment, in its entirety, is organised. This makes it harder for users to build a mental model that would allow them to move between content spaces. Clearer aids to improve navigation and orientation, and more selective use of hyperlinked text, could assist users to find specific content and better understand how the site is connected.

Recommendation 23: Review information architecture to make it more systematic

FWC should consider reviewing the information architecture in order to restructure content in a way that makes it more systematic, and makes the organisation logic evident in a way that is easy to quickly understand and navigate. For maximum benefit, consider co-designing the content hierarchy with members of the public through activities such as card sorting.

Recommendation 24: Structure architecture around user needs or behaviours

FWC should consider structuring website architecture around user needs or behaviours. There is a clear process involved in applying for unfair dismissal, and by reflecting these activities in the content architecture it would help people quickly and easily find relevant information (for example, Learn about Unfair Dismissals, Check eligibility, Prepare your application, Lodge an application, etc.).

Recommendation 25: Review the use of hyperlinks in content

While hyperlinks are helpful in most circumstances, on the unfair dismissal webpages its use is problematic as the overall information architecture of the site, the navigational menu and the orientation tools (i.e., breadcrumbs) are not working in harmony with hyperlinked text, creating potential confusion for users.

4.2.6 Improve readability of content

We are aware that the FWC is already undertaking work to review their information content as part of the *What's Next* initiative, including applying plain language principles to its correspondence, notices and guidance materials to ensure that it is accessible, accurate and consistent. Nonetheless, clarity of information is hampered in several ways, making it more difficult for people to comprehend and correctly act upon this information. In line with this, our recommendations are below.

Recommendation 26: Consider how content generally can be communicated in a simpler manner.

Internal terminology and phrasing (or legal phrasing) reduces comprehension. Additionally, readability consensus testing scored the FWC website content at a 12th-grade reading level (Difficult), further limiting comprehension for users. (The Neilson Norman consumer group [recommend](#) an 8th-grade reading level if targeting a broad consumer audience.)

The Commission should continue its existing program of plain language redrafting work to reduce the overall reading age of its website content. This will greatly improve comprehension and compliance.

Recommendation 27: In tandem with a review of the information architecture of the website, **consider how content can be streamlined and duplicates reduced.**

Streamlining content will mean that users are better able to follow a logical progression of content towards unfair dismissal application. The depth and breadth of content that users are expected to read prior to beginning an application increases the likelihood of task abandonment, or results in users reading only what is required to perform the immediate next steps to progress their application. This is further hampered by the fact that content tends to be duplicated/repeated throughout the site, meaning users are regularly re-reading content and not progressing towards application.

Recommendation 28: Consider whether there are opportunities to **separate and sequence information along the journey** to application.

Generally, people only want to know what they need to know, when they need to know it – which in BI we refer to as ‘timeliness’. Including unnecessary, distracting, or diverting content along the application journey makes informed decision making and task completion more difficult.

For example:

- Asking for feedback on the application at the beginning, or during the application process, as opposed to afterwards.
- In the Eligibility Quiz users are asked how long ago their dismissal took effect (i.e. less/more than 21 days). If they answer ‘greater than 21 days’ they are provided a link, directing them to information about Extension of Time. However, they are also able to learn about and address this obstacle in their application, and so this link diverts them from the goal of applying.
- During unfair dismissal applications, users can apply for a fee waiver using the Fee Waiver Form (F80). To do this requires

leaving the application to download and complete a form. If this process was integrated into the application there would be a higher rate of compliance, as users would complete their overall goal more efficiently.

- The persistence of Hints & Tips and FAQs through every stage of the OLS could be distracting. This content could be shown once and then hidden or reduced in size so that users could have more space for their application.

Separating and sequencing information will mean that, instead of requiring intense reading at the beginning, users only have to read what is pertinent to correctly complete each stage of the task as they are performing it.

Recommendation 29: Consider **editing copy for length and increasing the font size and line spacing** for enhanced readability.

Ensure font size and line spacing meet web content accessibility guidelines version 2.0 (WCAG 2.0) standards to assist users who are visually impaired to access content. Even for users without visual impairment, increased effort to read increases strain, which in turn increases the likelihood of task abandonment/not reading important information.

Recommendation 30: If hyperlinks must be used to aid navigation, **consider how phrasing of the hyperlink texts and link destination pages can be harmonised** better to provide greater accuracy and clarity for users.

Call-to-actions (CTA), exhibited in hyperlinks, often don't accurately describe where the link leads to, meaning users are sometimes misdirected away from accomplishing their goal (e.g., lodging an application). For example, although the sentence prior to the hyperlink states that the links below provide more detailed information about the Commission's process for dealing with 'Applications for unfair dismissal', reading the hyperlink text itself does not provide an accurate description of the destination it takes users to (i.e., users cannot actually begin an application for unfair dismissal on the destination page).

Hyperlink text should be renamed so adjectives and action-oriented descriptions are exclusively used only where users will be able to take action at the destination page (e.g., 'lodge an unfair dismissal application', 'check your eligibility for making an unfair dismissal application'). Where a hyperlink will direct users to an information page, the descriptive text should reflect this (e.g., 'find out more about the Commission's process', 'see examples of cases granted an extension of time').

4.2.7 Improve pathways

Pathways represent the steps and stages users take to achieve goals. For those attempting to make an unfair dismissal application, the pathway is unclear and made even less so by the presence of divergent pathways.

Recommendation 31: Place ‘Apply Online’ buttons on key webpages that receive high traffic, to provide users with a visually-recognisable aid that furthers them along the pathway to application completion.

In key spaces on the FWC website, such as the Termination of Employment or Unfair Dismissal pages, or the Eligibility Quiz, there is no direct pathway that allows users to begin their online application. Our investigation revealed that – controlling for the OLS link, which is nested in the third level of content in the menu – there were only 2 direct links to lodging online: one embedded in the Unfair Dismissal Application Form (F2), the other as a hyperlinked text in the Lodge an Application webpage. This means that users must move through multiple pages, trying various links, until they find the correct one that takes them to the OLS.

Recommendation 32: Consider how links to helpful information might be placed on pages in a way that doesn’t distract or divert users unnecessarily.

The use of hyperlinks hinders the user journey at times, as it takes users on divergent paths and makes the journey to unfair dismissal application more complex and indirect. By retaining useful links (for example, in a sidebar or a box at the end) but removing them from the main information (i.e., body copy), users will gain greater focus and clarity, and be able to make more considered decisions on how to proceed.

4.2.8 Improve technical issues

Technical limitations impede behaviours, resulting in a poorer experience for people trying to lodge an unfair dismissal application.

Recommendation 33: Consider reviewing the use of iframes within pages.

Pages within the website, but especially in the OLS, employ iframes. This is problematic, as scrollable sections within scrollable pages reduce usability and increase the time required to complete tasks, leading to further frustration. With the advent of infinite scrolling (think Facebook, Instagram, LinkedIn, etc.), scrolling is no longer a real concern for users. Removing content from iframes will give users a greater experience, reduce usability issues, and allow pages to be better optimised for smaller screen sizes. As such, the use of iframes should also be avoided wherever possible in the development of eCase to enable accessibility for people choosing to use mobile or tablet devices.

4.3 Preparing an application



This stage covers the process of actually preparing an application for an unfair dismissal. At this stage, a user has decided to make an application, and is required to provide a range of information and documentation to support their application. The key issues in this stage are:

- 4.3.1 Applicants do not provide important information, such as employment commencement and termination dates, or the identity of the respondent
- 4.3.2 Applicants upload document formats that do not comply with FWC OLS requirements
- 4.3.3 Applicants lodge large amounts of confusing and disorganised material

4.3.1 Applicants do not provide important information, such as employment commencement and termination dates, or the identity of the respondent

Recommendation 34: Online – Use mandatory fields only when necessary (e.g. for information required to identify or process cases)

When online, the use of mandatory fields (*) can promote completion of essential information needed to identify or process applications. This is a well-established pattern and should be balanced with access considerations.

We recognise that this may be addressed by the new eCase system, which already employs some mandatory fields in the design of the online forms.

Recommendation 35: Offline – Use visual interventions to increase the salience of mandatory information, and consider grouping mandatory information together.

It may be harder to force field completion on a physical form, however we believe a similar approach may result in increased compliance. Using visual interventions to increase the salience of mandatory information can help applicants understand the essentiality and importance of certain information (see Figure 9).

To help ensure compliance, consider whether it makes sense to have all mandatory information grouped together for ease of completion and enhanced salience. As noted above, however, by shifting users to the online form, many of these issues can be overcome.

Figure 9. Applying visual elements to increase salience of mandatory information


REQUIRED

FAIR WORK COMMISSION
Form F2 – Unfair dismissal application

Form F2 – Unfair dismissal application

Fair Work Act 2009, s.394
This is an application to the Fair Work Commission (the Commission) for an unfair dismissal remedy under Part 3-2 of the Fair Work Act 2009.

The Applicant (you)

 These are your details. Please make sure you provide a telephone number for the conciliation conference.

Title [] Mr [] Mrs [] Ms [] Other please specify:

First name(s)

Surname

Postal address

Suburb

State or territory **Postcode**

Phone number **Fax number**

Mobile number

Email address

Note: If you provide a mobile number the Commission may send reminders to you via SMS.

Do you need an interpreter?

Recommendation 36: Create another category of value below ‘mandatory’, such as ‘IMPORTANT’, and provide a brief description of why this information is important

Encouraging users to upload information they may not have immediate access to could create some tensions – for example, it may come at the cost of the application being lodged on time, or being completed at all. Because the use of mandatory fields should be used for only mandatory information, other means of increasing the importance of certain information should be considered.

Incorporating an explanation of why the information is important will also help enhance compliance, as applicants will be able to identify with the value this information provides.

Figure 10: Applying visual elements to increase salience of important information


FAIR WORK COMMISSION
Form F2 – Unfair dismissal application

IMPORTANT

Form F2 – Unfair dismissal application

Fair Work Act 2009, s.394
This is an application to the Fair Work Commission (the Commission) for an unfair dismissal remedy under Part 3-2 of the Fair Work Act 2009.

The Applicant (you)

 These are your details. Please make sure you provide a telephone number for the conciliation conference.

Title [] Mr [] Mrs [] Ms [] Other please specify:

First name(s)

Surname

Postal address

Suburb

State or territory **Postcode**

Phone number **Fax number**

Mobile number

Email address

Note: If you provide a mobile number the Commission may send reminders to you via SMS.

Do you need an interpreter?

4.3.2 Applicants' document formats that do not comply with FWC rules

It is difficult for us to ascertain the true nature of this particular behavioural problem and recommend a viable solution. In general, more investigation may be required to understand the behaviour. Our assumptions are:

- Applicants may not have access to adequate scanning facilities, which is why they are using camera(phone)s to capture documents.
- Applicants may have time pressures, or feel that they must submit information before they are 'timed out' online, and are resorting to hastily compiling documents for submission.

Recommendation 37: Consider how to help channel behaviour towards lodging forms in appropriate ways.

Again, the best solution may be to direct people to submit via channels that minimise these issues. Alternatively, if the barrier is a lack of scanning access, providing information about scanning facilities may assist users.

Recommendation 38: Work with existing behaviours to increase compliance.

Rather than eliminate the behaviour, consider whether there are ways to work with existing behaviours to increase compliance. This could mean providing

clear instructions on how to take acceptable photos, similar to what is provided when someone is required to take identification photos (which can be done at home on a camera phone, if strict conditions are met).

4.3.3 Applicants have difficulty identifying relevant information to support their application

Applicants sometimes provide information that is surplus to the requirements for processing their application. This suggests that applicants would benefit from more direction on the types of information relevant to their stage of the process, and how these materials should be best presented to put forward their case in a relevant way and minimise delays caused by additional administration.

Recommendation 39: Ensure applicants have sufficient guidance on information requirements *before* they begin the application.

For an application to be processed it needs to be considered by the Commission as 'complete'. Providing clear guidance up-front on what information is required for an application to be considered 'complete' would allow applicants to prioritise their efforts accordingly so that they can lodge their application on time.

Guidance should highlight what is critical to the application versus what is additional information for each stage of the process. This would help applicants to organise and prepare critical documents as a priority, leaving other potential supporting information to be gathered at a later stage in the process. It would also set expectations before applicants begin the process and reduce potential stress applicants may be feeling about not knowing what information is relevant or useful.

Providing applicants with examples of the types of relevant documents, and where applicable, including instructions on what is acceptable in terms of file formats, size restrictions, and quality of images, may help to reduce the incidence of unacceptable document types and disorganised material being submitted.

If an automated and streamlined process is available, there may be an opportunity to introduce a staged application process with applicants only being required to prepare the 'essential' information needed at each stage. This might help decrease late lodgments without significantly increasing incomplete lodgments or unintended consequences.

Recommendation 40: Provide a 'contents page' or 'checklist' so that applicants can identify which documentation will be required/valuable.

To support the previous recommendation, providing applicants with a checklist prior to beginning their applications not only helps them to organise their documents in a logical fashion, but also communicates what information may be valuable to include. To minimise friction and aid compliance, the terminology of documentation used in the checklist should also align with options to select when uploading supplementary documents in the online lodgment system.

Recommendation 41: Provide applicants with the option to add a ‘caption’ to describe the material they are uploading/handing in.

Allowing users to caption or describe the supporting documents will assist FWC staff to efficiently review and process their application (see Figure 11 below).

Figure 11: A caption function allowing users to comment on documentation so users have greater understanding of context and motivation for inclusion.



"Please find attached copies of email communications between myself and my employer from June 2017 to April 2019."

4.4 Lodgment



This stage refers to the point in the process where the application has been completed, and the user is ready to lodge – or has lodged – the application. The key issues here are:

- 4.4.1 Applicants do not pay the application fee
- 4.4.2 Applicants lodge multiple versions of the same application
- 4.4.3 Applicants lodge the application late

4.4.1 Applicants do not pay the application fee

Recommendation 42: Guide user behaviour towards lodging applications online via the online system as the preferred channel over email.

Interviews with FWC staff indicated that lodging an unfair dismissal application (Form F2) via email without paying the application fee is one of the most common issues seen during this stage. We heard this was such a common occurrence that following-up an unpaid application is a ‘normal’ stage of an application process. One possible reason we heard for this is that applicants wishing to pay by credit card for applications lodged via email or post are currently required to pay over the telephone, and that challenges begin to occur when staff try to contact applicants to obtain payment after their application has been received.

As such, greater efforts should be made to guide user behaviour towards lodging applications via the available online lodgment, and not via email or post, as both OLS and the new eCase system permit applicants to make secure online payments using their credit card. More specifically, wherever on the website there is a reference to lodging an unfair dismissal application, or Form F2, users should first be prompted to make an online lodgment.

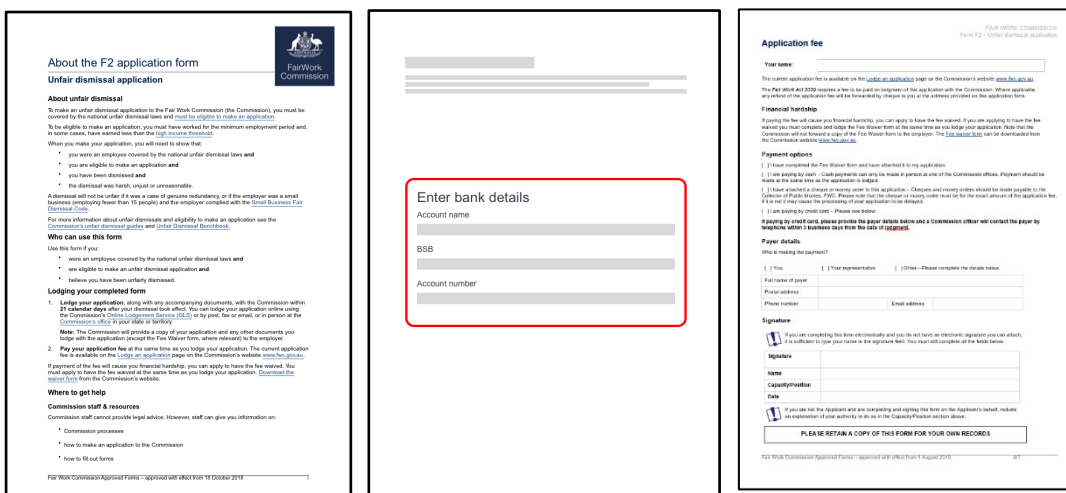
Recommendation 43: Integrate direct debit payment option (i.e. bank details) into the Unfair Dismissal Application Form (F2) form and move the “Application Fee” section to immediately before the signature.

At present, applicants can pay the application fee by cash at one of the Commission offices, by cheque or money order, or by credit card over the phone. As bank transfers are an increasingly common method of payment that users would be familiar with, providing applicants with another convenient payment option may reduce the proportion of unpaid applications as well as improve access for those who do not have (or do not wish to use) a credit card to pay the application fee. In addition, by moving the application fee section from the very end of the form to immediately before the signature, this may

help increase compliance and reduce the likelihood of applicants overlooking the requirement for a fee payment.

If paying the fee will cause the applicant financial hardship, they can instead apply to have the fee waived by lodging the Fee Waiver form. To make this process more streamlined for users, consider integrating relevant portions of the Fee Waiver Form (F80) into the F2 form alongside payment information. Allowing people to provide payment details or apply for a fee waiver as part of their application form not only reduces the number of additional forms (and thus steps) required to apply, but we assume it may also increase operational efficiency for Commission staff who process applications.

Figure 12: Integrating payment details (centre) into the beginning of the F2 form, and moving the application fee section before the signature.



4.4.2 Applicants lodge multiple versions of the same application

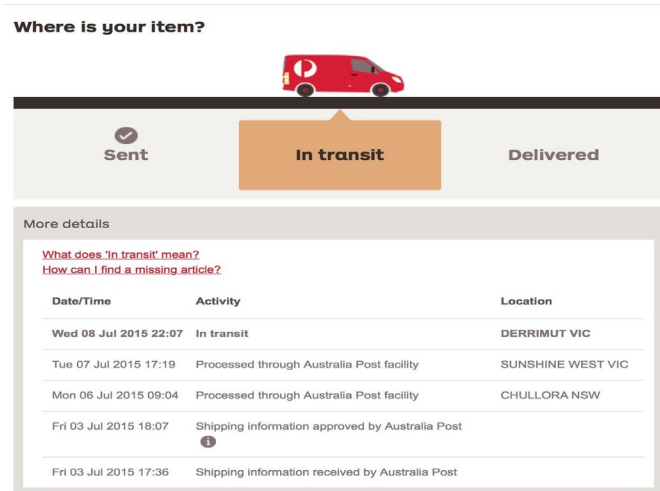
At this stage it is hard for us to ascertain the nature of the problem and address why this is occurring. Our assumption is that this may be due to a lack of transparency over the process, and that applicants may not feel that they received adequate confirmation that their application was received, nor have any indication of what stage of the process their case is at or how long it will take to resolve. Believing their original application was not received by the Commission, they may apply again via the same (or a different) channel.

Recommendation 44: Increase transparency of the application handling process

If the nature of the problem is due to uncertainty around where their application is in the process (i.e., applicants not realising that the Commission is waiting for them to respond to a request), then providing applicants with information on the status or 'stage' of their application may be beneficial and help improve responsiveness – particularly where applicant action is required. We believe a best-in-class example to draw inspiration from is Australia Post's delivery tracking services (below). It provides customers with a clear, real-time representation of a process in action.

Whilst this AusPost service is supported by significant operational stages, we believe a streamlined version with stages that are meaningful to the applicant can be considered in the development of the Commission’s new eCase system.

Figure 13. Australia Post’s delivery tracking service.



4.4.3 Applicants lodge the application late and continue their application without understanding the additional obstacles associated with exceptional circumstances

Applicants may lodge their application outside the 21-day timeframe and decide to continue their application without understanding the additional obstacles associated with exceptional circumstances. Providing applicants with information about tribunal process and data on the range of potential outcomes earlier on during the ‘Discovery and Investigation’ stage is essential in ensuring applicants can make informed decisions about their course of action. Tools discussed in previous sections (e.g., vignettes on exceptional circumstances and a ‘countdown’) can be used to communicate this information closer to the point of decision making.

4.5 Processing and follow-up



The final stage is, in some respects, an ‘optional’ stage – ideally, this stage would not exist or would be relatively small. That is, there would be minimal follow-up required once an applicant has lodged their unfair dismissal application with the Commission. However, the nature of the process means that there is some follow-up required by the Commission, often to obtain payment of the application fee or seek further information to resolve issues with an application.

The key issues in this stage are:

- 4.5.1 Applicants do not respond to calls or emails from the FWC
- 4.5.2 Applicants who made a telephone application do not complete the application form

4.5.1 Applicants do not respond to calls or emails from the FWC

There are several challenges associated with follow-up client contact: they may not be available at the time; they may forget they have a missed call requiring their attention; and they may not trust unknown phone numbers. We believe certain small actions can improve compliance.

Recommendation 45: Allow applicants to select a date and time for the follow up contact and ‘manage’ their appointment online if needed.

Similar to many online reservations and booking systems (e.g., those used when booking doctors or personal appointments, restaurant reservations, etc.), the Commission should consider integrating this functionality into eCase, giving applicants the power to plan their schedules. In doing so, applicants are more likely to arrange the most appropriate time for when they are available to be contacted. Moreover, encouraging people to plan in advance can help them to accurately estimate the resources (such as time or level of commitment) needed to meet their goals, thereby increasing their ability to follow-through on their intentions.

Providing an online booking function will also allow applicants to ‘manage’ their appointment and reschedule if necessary.

Recommendation 46: Assist applicants by providing links (via email or SMS) that automatically **add the scheduled appointment to their calendar.**

Providing extra ways to confirm and remind individuals may help them follow-through and stick to their commitments.

Recommendation 47: Send a message in advance so that applicants anticipate the conversation.

Send a message in advance so that applicants who may have forgotten about the appointment, or are prone to avoid taking unexpected calls, have the opportunity to anticipate the conversation.

Recommendation 48: Optimise follow-up communications to ensure that they stress importance and urgency of their application.

Optimise follow-up communications to ensure that they, beginning with the subject line, stress importance and urgency of their application. The Commission has already begun implementing letters that use plain language principles, which is a positive start. Importantly, these follow-up communications should have simple and specific instructions on exactly what steps an applicant needs to take, and the deadline.

4.5.2 Applicants who made a telephone application do not complete the application form

Applicants who lodge an application over the phone are sent a partially filled form (based on the information they provided over the phone) for them to complete any unanswered questions and sign. Applicants then return the completed and signed form to the Commission for processing. Depending on the applicant's turnaround time, this can delay the application progressing by 2-3 weeks while the Commission waits to receive the completed and signed form (often by post).

Recommendation 49: Prompt phone applicants through a letter, email, or SMS reminder

One possible solution could be that all applicants who begin an application over the phone could be sent a letter, email, or SMS after the call prompting them to complete their application, sign and return it to the Commission within a specific timeframe. As most phone applicants have low technology literacy, it may be preferable to post them a letter with a hard-copy of the partially filled form and a reply paid envelop. This helps to reduce friction costs (or barriers) that may prevent applicants from taking action and returning the form before the deadline. To optimise this experience, communications should also provide applicants with explicit details of what information or questions are outstanding in their application, and if applicable, what additional supporting documentation may be needed.

Recommendation 50: For online applicants, use a 'direct reply' that informs applicants of their progress and what outstanding information is required to complete their application

The process of receiving outstanding documentation and information can be expedited by facilitating a 'direct reply' (see Figure 14 below): for online applicants, a unique and anonymous case number allowing them to upload documents directly into a streamlined application process.

Figure 14: A clear communication prompt which informs applicants of their application progress, what is required to complete it, and how to do so.



Your application is
75% complete

We still require you to upload the following documents:

- Document 1
- Document 2
- Document 3

To complete your application click [here](#).

05 / Literature review

Behavioural insights (BI) strategies can be applied to improve courts and tribunals at any level, from individual-level nudges to system-level changes. This review outlines BI approaches to problems at 3 different levels of complexity within the court and tribunal system that may be applicable to the FWC:

- 5.1** Individual-level nudges to increase access to court and tribunal services
- 5.2** Individual-level nudges to increase compliance with court and tribunal decisions
- 5.3** System-level changes to increase the efficiency of court and tribunal internal processes

We will discuss each of these in turn below.

5.1 Using BI to increase complainant access to court and tribunal services

5.1.1 Use plain language and make important information stand out on summonses

Rephrasing complicated information into plain language is an effective behaviour change strategy for people of all education levels. This could also involve removing unnecessary information that individuals don't need or are not required to pay attention to, as it may 'drown out' other important information.³³ Plain language has proven effective in the healthcare context to improve medical professionals' adherence to clinical guidelines.^{34,35}

The most effective techniques for simplifying official forms

The behavioural sciences literature shows that forms increase understanding and accuracy when they:

- Put complicated information in **simple language**, with clear examples where appropriate
- Use '**visual indexing**' where the eye is drawn to important parts of the form
- **Make important information more salient**, by moving it to the top of the form, using bold font, etc.

Medication errors are common in hospitals, and most likely to be made when they are being prescribed (compared to when they are dispensed or taken by the patient).³⁶ King and colleagues (2014) redesigned the patient prescription chart in use at a UK hospital to include 'visual indexing' features to draw attention to important parts of the chart (e.g. antibiotic prescriptions should be reviewed every 3 days, see Figure 15 below).³⁷ Compared to the standard format, the redesigned chart made doctors significantly more likely to write correct medication dosage, frequency, and contact information on the form.

³³ Herd, P., DeLeire, T., Harvey, H., & Moynihan, D. P. (2013). Shifting administrative burden to the state: The case of medicaid take-up. *Public Administration Review*, 73(s1), S69-S81.

³⁴ Michie, S., & Lester, K. (2005). Words matter: increasing the implementation of clinical guidelines. *BMJ Quality & Safety*, 14(5), 367-370.

³⁵ Michie, S., & Johnston, M. (2004). Changing clinical behaviour by making guidelines specific. *Bmj*, 328(7435), 343-345.

³⁶ Leape, L. L., Bates, D. W., Cullen, D. J., Cooper, J., Demonaco, H. J., Gallivan, T., ... & Nemeskal, R. (1995). Systems analysis of adverse drug events. *Jama*, 274(1), 35-43.

³⁷ King, D., Jabbar, A., Charani, E., Bicknell, C., Wu, Z., Miller, G., ... & Darzi, A. (2014). Redesigning the 'choice architecture' of hospital prescription charts: a mixed methods study incorporating in situ simulation testing. *BMJ open*, 4(12), e005473.

Figure 15: Behaviourally redesigned patient prescription chart

ANTI-INFECTIVE AGENTS

Prescriber to review every third day and initial in red outlined box

MEDICINE (Approved name)

Date

Day #	1	2	3	4	5	6	7	8	9	10	11	12	13	14
-------	---	---	---	---	---	---	---	---	---	----	----	----	----	----

08

12

18

22

Additional information

Pharmacist Initials

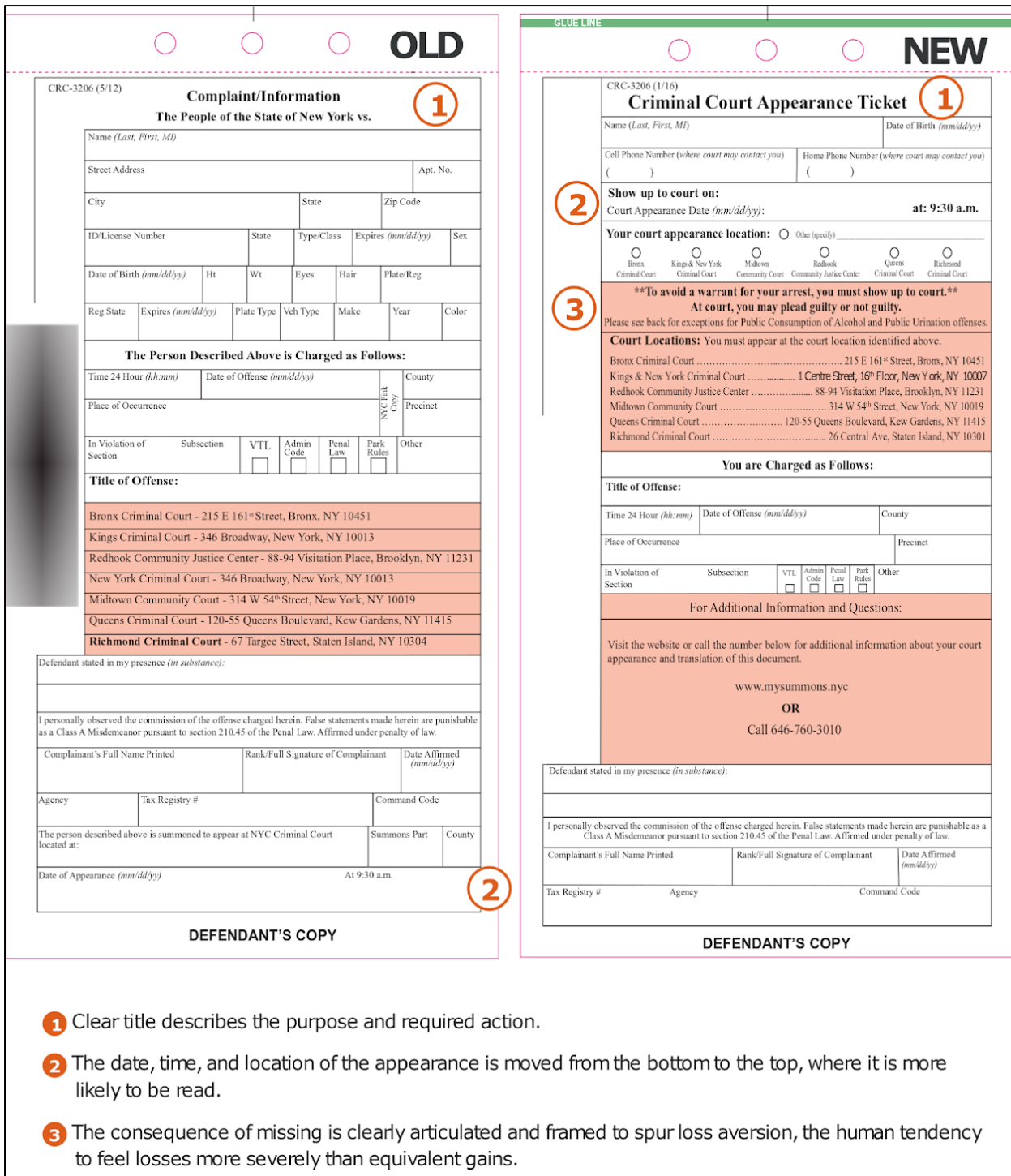
In the court context, Ideas42 and the University of Chicago Crime Lab collaborated to redesign New York City summons forms that misdemeanour offenders receive in the mail (see Figure 16 below).³⁸ The redesign included:

- Moving information about the offender's court date from the bottom to the top of the form, where it is more easily noticed
- Rephrasing the summons into clear language, and
- Bolding the description of the penalty for failing to appear.

Compared to offenders who were issued the old summons form, offenders who were issued the behaviourally redesigned form were 13% (6.4 percentage points) less likely to fail to appear at their court date.

³⁸ Cooke, B., Diop, B. Z., Fishbane, A., Hayes, J., Ouss, A., & Shah, A. (2018). Using Behavioral Science to Improve Criminal Justice Outcomes.

Figure 16: Behaviourally redesigned NYC court summons



The NSW Behavioural Insights Unit (BIU), with the support of BIT, interviewed offenders and observed court proceedings for apprehended domestic violence orders (ADVOs). They found that ADVOs are not well understood by many

defendants and victims.³⁹ The BIU changed the language of the ADVO form, such that:

- It uses plain language, including simple explanations and examples,
- The form is now personalised to the offender, and all third-person language has been removed
- The consequences of breaching the ADVO have been moved to the top of the form

These changes significantly lowered the number of years of education needed to understand the form, from over 13 years, to 8 years.⁴⁰ This plain-English ADVO was rolled out across NSW at the end of 2016.⁴¹

5.1.2 Use timely personalised reminders to increase court attendance

Timely reminders reliably increase attendance at healthcare appointments,^{42,43} adherence to medication regimes,^{44,45} on-time fine payments,⁴⁶ and are now used to improve court attendance in Australia and overseas.

How to design an effective reminder

The behavioural science literature shows that the most effective reminders:

- State the **date and time** of the appointment
- State the **penalty** for failing to attend
- Are **sent soon before the court date** (around 48 hours before the appointment)

³⁹ Behavioural Insights in NSW, BIU Update Report 2016

⁴⁰ Measured using the Flesch Kincaid Reading Ease test

⁴¹ <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2016/no-more-excuses-advos-plain-english.aspx>

⁴² Guroi-Urganci, I., de Jongh, T., Vodopivec-Jamsek, V., Atun, R., & Car, J. (2013). Mobile phone messaging reminders for attendance at healthcare appointments. *Cochrane Database Syst Rev*, 12(12), CD007458.

⁴³ Boksmati, N., Butler-Henderson, K., Anderson, K., & Sahama, T. (2016). The effectiveness of SMS reminders on appointment attendance: a meta-analysis. *Journal of Medical Systems*, 40(4), 90.

⁴⁴ Finitis, D. J., Pellowski, J. A., & Johnson, B. T. (2014). Text message intervention designs to promote adherence to antiretroviral therapy (ART): a meta-analysis of randomized controlled trials. *PloS one*, 9(2), e88166.

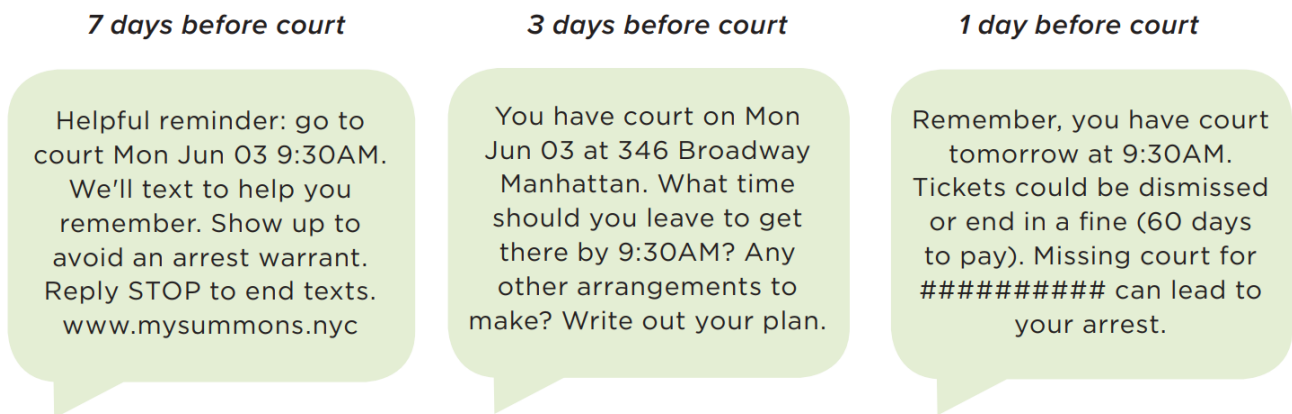
⁴⁵ Thakkar, J., Kurup, R., Laba, T. L., Santo, K., Thiagalingam, A., Rodgers, A., ... & Chow, C. K. (2016). Mobile telephone text messaging for medication adherence in chronic disease: a metaanalysis. *JAMA internal medicine*, 176(3), 340-349.

⁴⁶ John, P. (2014). Policy entrepreneurship in UK central government: The behavioural insights team and the use of randomized controlled trials. *Public Policy and Administration*, 29(3), 257-267.

- Are **personalised** to the recipient (use their first name in the message)
- Are sent to **validated mobile phone numbers**

One US field trial found that, compared to no reminder, a postcard stating the time and place of the offender's court appointment increased attendance by 23% (2.9 percentage points).⁴⁷ This study also found that adding information about the penalty for failing to appear further increased attendance.^{48,49}

Figure 17: Most effective court attendance reminder text messages



Ideas42 and the University of Chicago Crime Lab used reminder text messages, stating the time and date of the court appointment, to increase court attendance (see Figure 17 above).⁵⁰ They compared simple reminders, messages including the penalty for failing to appear (“Show up to avoid an arrest warrant”), and messages including planning prompts (“What time should you leave to get there by 9:30am?” –see section 2.3). Any reminder to attend court reduced failures to appear by 21% (8 percentage points), but reminders were most effective when they included a combination of the penalty for failing to appear + planning prompts (28% reduction in failures to appear).

⁴⁷ Herian, M. N., & Bornstein, B. H. (2010). Reducing failure to appear in Nebraska: A field study.

⁴⁸ Simple reminder + penalty increased attendance by 34 percent (4.3 percentage points).

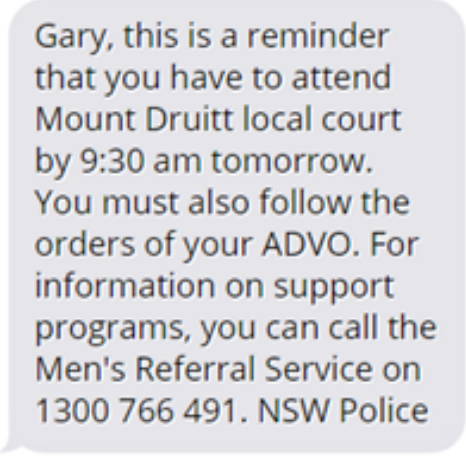
⁴⁹ Tomkins, A. J., Barnstein, B., Herian, M. N., & Rosenbaum, D. I. (2012). An experiment in the law: Studying a technique to reduce failure to appear in court. *Ct. Rev.*, 48, 96.; **see also** Bornstein, B. H., Tomkins, A. J., Neeley, E. M., Herian, M. N., & Hamm, J. A. (2013). Reducing courts' failure-to-appear rate by written reminders. *Psychology, Public Policy, and Law*, 19(1), 70.

⁵⁰ Cooke, B., Diop, B. Z., Fishbane, A., Hayes, J., Ouss, A., & Shah, A. (2018). Using Behavioral Science to Improve Criminal Justice Outcomes.

BIT has successfully used SMS reminders to improve appointment attendance in a number of field trials. Notably, focusing on loss aversion by highlighting the costs to the system as a whole, seems to be the most effective way to increase responses. In the UK, SMSs that stated the cost to the NHS of a missed doctor's appointment ("Not attending costs NHS £160 approx.") reduced missed appointments by 23% (2.6 percentage points).⁵¹ In NSW, personalised SMS reminders to domestic violence offenders reduced failure to appear in court by 25% (4 percentage points, see message example below, to the right).

In the UK, BIT has found that including a recipient's first name in the text message reminding them to pay a court-ordered fine increased responses to the messages by 43% (10 percentage points).⁵²

Importantly, mobile phone numbers should be validated before sending out SMS reminders. One US study found text message reminders had no effect on court attendance, but also found that over 60% of the phone numbers used in the trial were invalid.⁵³



Gary, this is a reminder that you have to attend Mount Druitt local court by 9:30 am tomorrow. You must also follow the orders of your ADVO. For information on support programs, you can call the Men's Referral Service on 1300 766 491. NSW Police

5.1.3 Pre-populate forms to increase application submissions

How to effectively pre-populate forms

The behavioural science literature suggests that you should:

- Partially **pre-populate forms** and provide assistance to increase completion rates
- **Make progress salient** through highlighting that the form is partially completed and including a clear next step
- Ensure that pre-filled **data is accurate**

⁵¹ Hallsworth, M., Berry, D., Sanders, M., Sallis, A., King, D., Vlaev, I., & Darzi, A. (2015). Stating appointment costs in SMS reminders reduces missed hospital appointments: findings from two randomised controlled trials. *PLoS one*, 10(9), e0137306.

⁵² The Behavioural Insights Team (2012). *Applying behavioural insights to reduce fraud, error and debt*. Cabinet Office, London, 185, 186.

⁵³ Chivers, B., & Barnes, G. (2018). Sorry, Wrong Number: Tracking Court Attendance Targeting Through Testing a "Nudge" Text. *Cambridge Journal of Evidence-Based Policing*, 2(1-2), 4-34.

Automatically filling in information from other available sources has dramatic impacts on completion rates across various areas. In taxation systems, pre-filled forms are strongly correlated with efficiency and accuracy,⁵⁴ and the time it takes to complete forms is reduced when information is pre-filled.⁵⁵ However, it is important that the information that is pre-filled is *accurate*. For example, taxpayers are unlikely to correct pre-filled information that underestimates their tax liability, meaning that pre-filling forms with inaccurate information can lead to *reduced* compliance.⁵⁶

A combination of pre-population and assistance may also help people appropriately access services. For example, using tax information (as well as providing assistance filling in a form) to apply for college financial aid increased the likelihood of submitting an application.⁵⁷ Importantly, this was associated with an increase in enrolments, suggesting that pre-population and assistance was not simply helping those who otherwise would have completed the form, and led to meaningful outcomes (i.e., access to college amongst low-income students).

To increase the effectiveness of partially pre-filling forms, showing users their 'progress' on a particular form, as well as highlighting a specific goal, may aid in completion. Studies have shown that people tend to complete tasks more quickly when progressing towards a goal. This is known as the "Goal Gradient Hypothesis", and it can be used to encourage users to fill in forms.⁵⁸ For example, showing users the 'goal' could be done using a progress bar that fills up as they upload more information. A good example of one can be found on LinkedIn. As shown in Figure 18 below, this progress bar makes uploading more information more attractive by giving a clear indication of the goal and explaining the benefits of achieving it. It also makes it easier by having a call-to-action button that users can click.

⁵⁴ Dohrmann, T. & Pinshaw, G. (2009). The Road to Improved Compliance. McKinsey. Retrieved from https://www.mckinsey.com/~media/mckinsey/dotcom/client_service/public%20sector/pdfs/road_improved_compliance.ashx

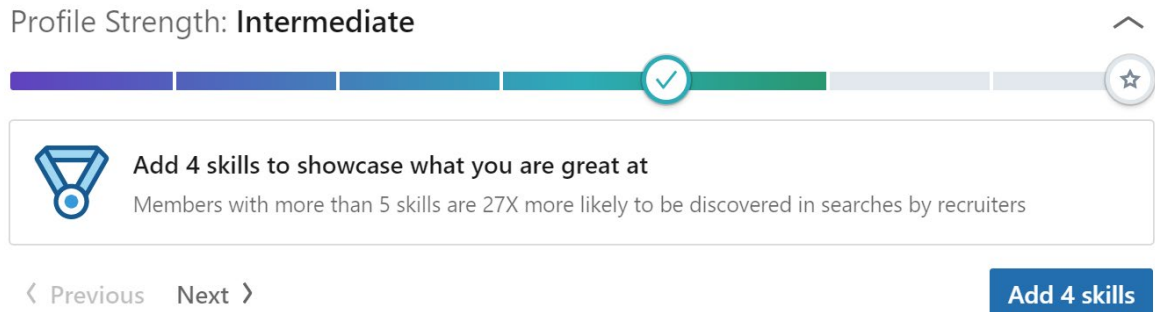
⁵⁵ Fonseca, M. A., & Grimshaw, S. B. (2017). Do behavioral nudges in prepopulated tax forms affect compliance? Experimental evidence with real taxpayers. *Journal of Public Policy & Marketing*, 36(2), 213-226.

⁵⁶ Fonseca, M., & Grimshaw, S. (2015). Does using behavioural prompts in pre-populated tax forms affect compliance? Results from an artefactual field experiment with real taxpayers. *Tax Administration Research Centre*, 15-15.

⁵⁷ Bettinger, E. P., Long, B. T., & Oreopoulos, P. (2013). The FAFSA project: Results from the H&R Block FAFSA experiment and next steps. Cambridge, MA: Harvard University.

⁵⁸ Kivetz, R., Urminsky, O., Zheng, Y. (2006). The goal-gradient hypothesis resurrected: Purchase acceleration, illusionary goal progress, and customer retention. *Journal of Marketing Research*, 43, 39-58

Figure 18: the progress bar on LinkedIn highlights users' current level of progress, while giving them a clear next step.



5.2 Using BI to increase compliance after a court or tribunal decision

5.2.1 Simplify orders and processes to increase compliance

How to simplify compliance orders

The behavioural insights literature shows that the most effective strategies for simplifying court orders and processes to increase compliance are:

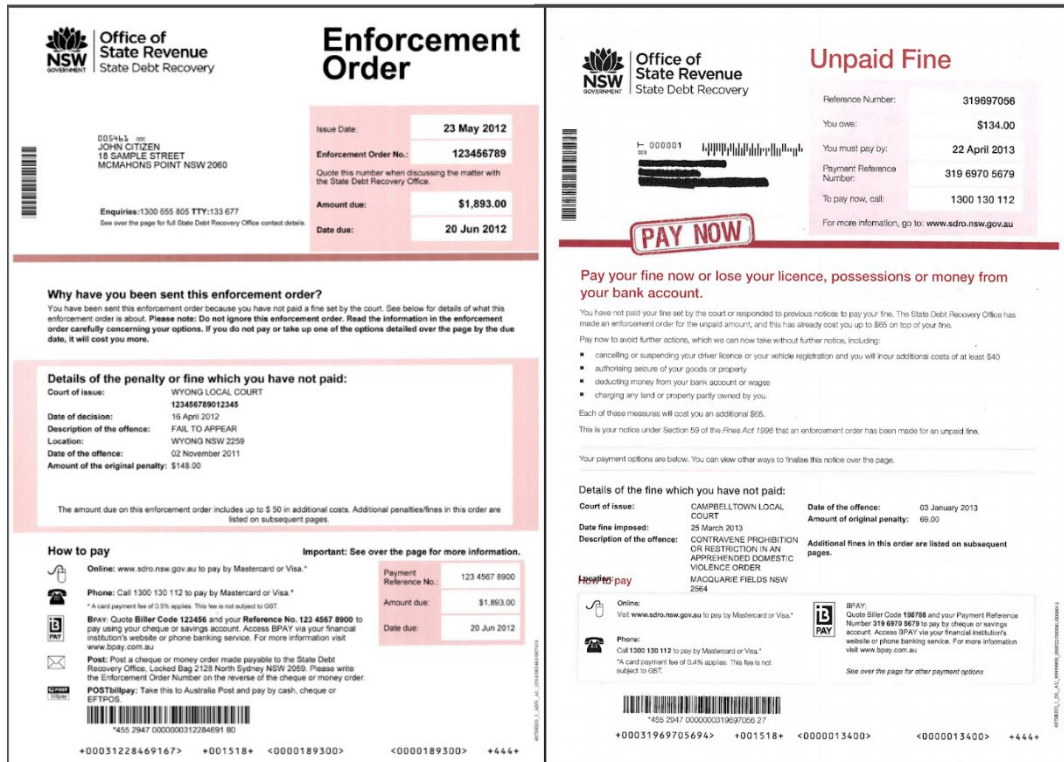
- **Simplifying the language on enforcement orders**, replacing legal jargon with plain English words wherever possible
- Having a **clear call-to-action**, like 'PAY NOW'
- Being as **specific** as possible about **which individuals** are responsible for compliance, and **when** they must comply by
- Opening an **amnesty period** for delinquent entities to come forward and receive assistance with compliance

In a NSW trial (see Figure 19 below), BIT redesigned state Enforcement Order notices such that:

- They had a clear call-to-action, in the form of a red 'PAY NOW' stamp at the top of the letter
- The language on the form was simplified, for example by changing 'enforcement order' to 'unpaid fine'
- The methods of payment section was reduced and simplified

These changes resulted in 21% (3.1 percentage points) more people paying their fines when compared to the old notice format. If rolled out at scale, the new letter would result in \$1.02 million in fine payments to the NSW government, and 8,800 fewer people having their driver's licence suspended.

Figure 19: Changes to the NSW Enforcement Order notice.



A study of compliance with orders issued by the Constitutional Chamber of the Supreme Court of Costa Rica assessed the characteristic of orders associated with better compliance.⁵⁹ The analysis found that highly specific orders, and those that gave a deadline for compliance, were associated with faster implementation of court orders than vague orders.

Notably, simplification in this way may also help to address cognitive overload – making information easier to understand and process means individuals need to expend less mental power trying to decipher the message, and can instead focus their efforts on trying to comply with the underlying intent of the communication. This is likely to explain a significant portion of the benefits from simplification – where a complex document might see individuals respond by ‘throwing up their hands’ in frustration, a simpler document can avoid this and facilitate greater compliance.

Simplification combined with amnesty may also be effective in encouraging non-compliant entities to resolve their issues in a timely manner. In the UK, the HMRC Risk and Intelligence Service Campaigns Team created an amnesty period for healthcare professionals (e.g. doctors and dentists) to resolve

⁵⁹ Gauri, V., Staton, J. K., & Cullell, J. V. (2015). The Costa Rican supreme court's compliance monitoring system. *The Journal of Politics*, 77(3), 774-786.

outstanding tax debts. The HMRC simplified the compliance letter sent to delinquent professionals, such that it:

- Simplified the language of the letter and put key messages at the top
- Highlighted required actions at the top of the letter
- Stated the penalty for failing to come forward during the amnesty period.

The amnesty period and simplified letter increased compliance in delinquent individuals by two-thirds (14 percentage points), leading to over £1 million in additional revenue.

Simplifying processes can also significantly increase compliance. For example, BIT found in a UK trial that sending people straight to a tax collection form, instead of to a webpage that contained a link to the form, increased tax payment by over 20% (4.2 percentage points).⁶⁰ Omitting one click from the payment process substantially increased compliance, showing that small changes can have big impacts.

5.2.2 Use social norms and framing to increase compliance

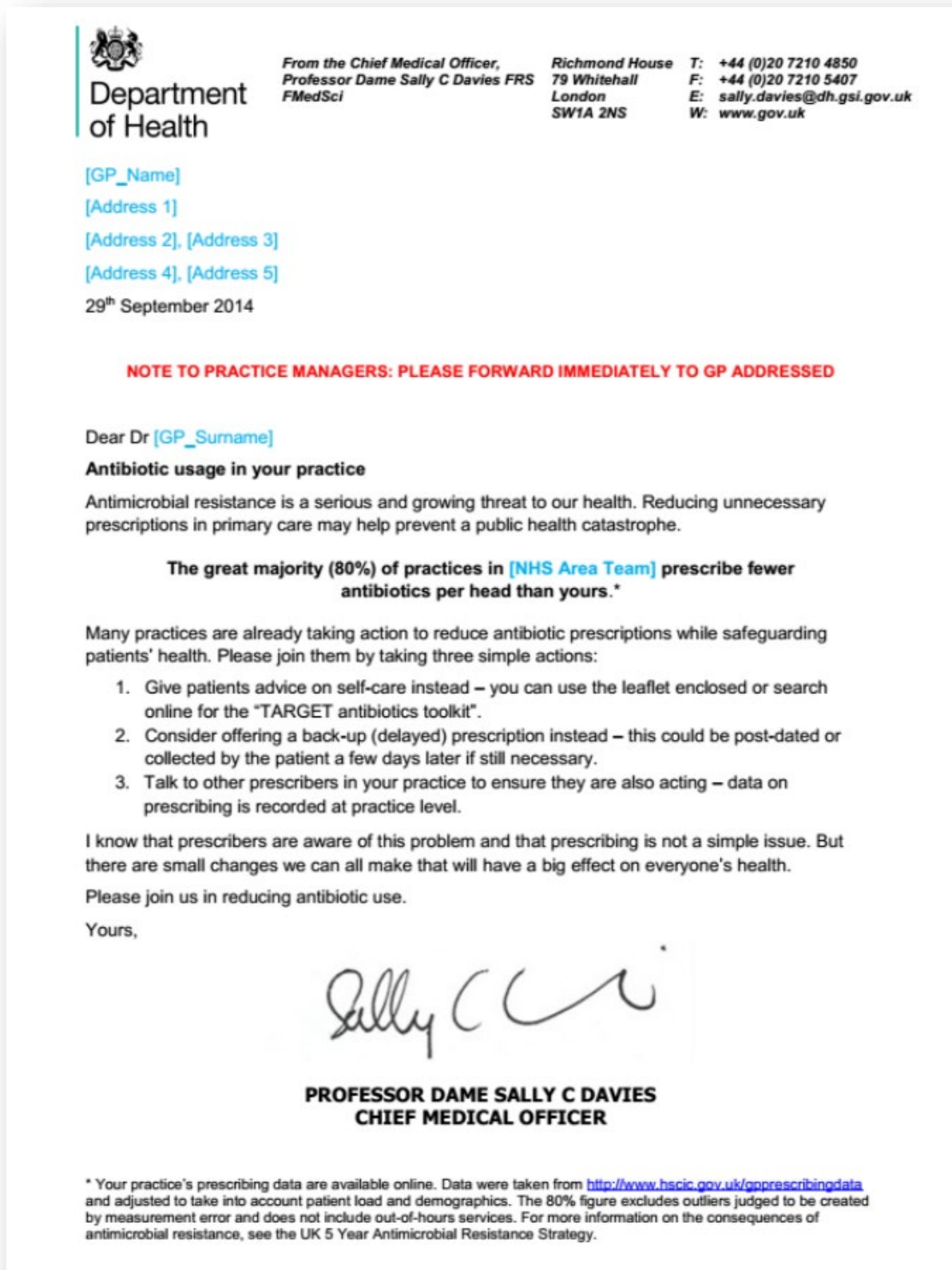
Simply changing the framing of letters and compliance notices can significantly affect recipients' likelihood to comply. BIT has demonstrated in a number of trials that stating social norms in compliance-focused letters can make recipients more likely to pay their tax on time,⁶¹ or persuade doctors to reduce unnecessary antibiotic prescriptions.⁶² Informing doctors that the 'great majority (80%)' of Practices in their area give fewer antibiotic prescriptions per patient than they do resulted in 73,406 fewer antibiotics being dispensed during the study period. Informing recipients that the majority of people comply within an appropriate timeframe may encourage those inclined to drag their feet to comply on time.

⁶⁰ The Behavioural Insights Team. (2014). EAST: Four simple ways to apply behavioural insights. Behavioural Insight Team, London

⁶¹ The Behavioural Insights Team. (2012). Applying behavioural insights to reduce fraud, error and debt. Cabinet Office, London, 185, 186.

⁶² Hallsworth, M., Chadborn, T., Sallis, A., Sanders, M., Berry, D., Greaves, F., ... & Davies, S. C. (2016). Provision of social norm feedback to high prescribers of antibiotics in general practice: a pragmatic national randomised controlled trial. *The Lancet*, 387(10029), 1743-1752.

Figure 20: Letter to GPs about antibiotic prescription in their practice,



leveraging social norms to curb unnecessary prescriptions

Similarly, the way that information is framed can be important in shifting behaviour. Previous BIT research has highlighted the importance of framing within the justice system. For example, one challenge is encouraging guilty pleas to be put in early, which is much more efficient for the system. The default is to frame them as 'early', but a more powerful message could instead be to make them the new 'normal', and frame other guilty pleas as 'late' pleas. Similarly, there may be other psychological barriers that can be overcome through framing – for example, diffusing the embarrassment of telling friends and family (which can prevent some early guilty pleas), or making the sentencing discounts easy for defendants to understand.

5.2.3 Use implementation intentions and planning to increase compliance

How to use implementations and planning to increase compliance

The most effective types of planning may depend on the individual who is using them. To incorporate effective planning, FWC should:

- Use **commitment devices**, such as identifying when, where, and how an individual should complete a behaviour for individuals who are being compelled to do something (e.g., turning up to court)
- Include **individual goal-setting and mental contrasting** (e.g., a WOOP) technique when individuals are voluntarily receiving assistance

BIT has recently successfully introduced a similar program in NSW courts to increase compliance with ADVOs, and the process is relatively simple and easy to complete. The program is currently being evaluated.

Implementation intentions are exercises that specify when, where and how a person intends to complete a goal. These can include barrier management (i.e., identifying how you'll overcome obstacles in advance), planning (e.g., identifying when, where, and how you'll complete an action), coping and action plans.⁶³ The effectiveness of implementation intentions in goal attainment has

⁶³ Both coping and action plans use the 'if-then' logic, and coping plans are analogous to barrier management. Action plans are slightly different in that they leverage a cue in the external environment to prompt a behaviour. For example, 'If I put down my school bag, then I will begin my homework'. For more information on action and coping plans, see for example:

been demonstrated in multiple populations across various behavioural areas.⁶⁴
⁶⁵ The use of planning prompts may be particularly useful when someone is being compelled to do something, such as turning up to court, filling in a complex form, or regularly submitting information.

In instances where the goal is self-directed (i.e., voluntary), implementation intentions are often combined with ‘mental contrasting’. Mental contrasting is used to help the person identify and visualise future goals and the factors in their present environment that may limit their ability to achieve them. The combination of mental contrasting and implementation intentions (MCII) has also been shown to be effective at changing multiple behaviours.⁶⁶ To combine these 2 techniques, a technique called ‘WOOP’ is often used. WOOP stands for:

- **Wish:** defining the wish or goal
- **Outcome:** imagine the best possible outcome
- **Obstacle:** what holds me back from experiencing that wish/outcome?
- **Plan:** Create an if-then (implementation intentions) plan for the obstacle

For example, a student aiming to improve their grades might imagine what it would be like if they achieved high grades (recognition from their peers, better job outcomes), and then imagine the current obstacles that prevent them from doing so (distractions that make it hard to study). The student would then formulate an “if...then...” statement as part of their plan (for example, “If I get distracted while studying, *then* I will move to a different room”).

The WOOP technique has been shown to be effective at supporting people achieve their goals across a wide range of outcomes, such as increasing physical activity, tackling depression and increasing attendance at school. In one example, two groups with mild to moderate depression were offered help with increasing social or physical activity, which have been shown to alleviate symptoms. One group was supported through ‘positive thinking’ methods, and a second used the combination of mental contrasting and implementation intentions. Those who used WOOP were twice as likely to achieve their goal as those in the ‘positive thinking’ condition.⁶⁷

Sniehotta, F. F., Schwarzer, R., Scholz, U., & Schüz, B. (2005). Action planning and coping planning for long-term lifestyle change: theory and assessment. *European Journal of Social Psychology*, 35(4), 565-576.

⁶⁴ Gollwitzer, P.M., & Sheeran, P. (2006). Implementation intentions and goal achievement: A meta-analysis of effects and processes. *Advances in Experimental Social Psychology*, 38, 69-119.

⁶⁵ Belanger-Gravel, A., Godin, G., & Amireault, S. (2011). A meta-analytic review of the effect of implementation intentions on physical activity. *Health Psychology Review*, 7(1), 23-54.

⁶⁶ These include reducing alcohol consumption and smoking, social anxiety and stress, pain management, time management, decision making, help-seeking, providing support to others, improved relationships, and increased physical activity.

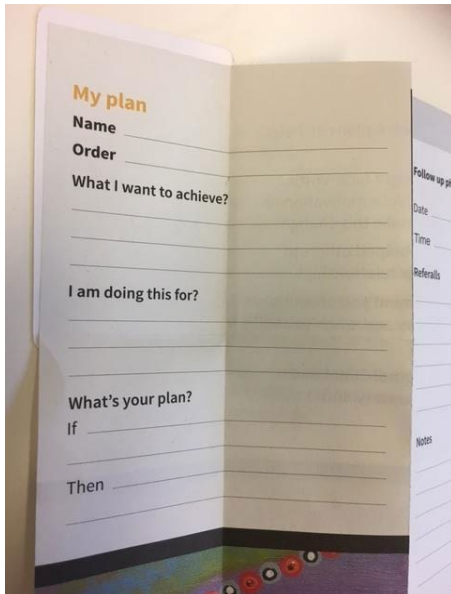
⁶⁷ Fritzsche, A., Schlier, B., Oettingen, G., & Lincoln, T. M. (2016). Mental Contrasting with Implementation Intentions Increases Goal-Attainment in Individuals with Mild to Moderate Depression. *Cognitive Therapy and Research*, 1-8

To our knowledge, there is limited research explicitly exploring the efficacy of implementation intentions and mental contrasting in the context of courts and tribunals. One area we believe this has promise in is increasing compliance with court orders. For example, we have implemented a program called 'What's Your Plan?', which aims to increase compliance with ADVOs.

The program involves a combination of:

- A 20-40 minute conversation between the defendant and a community support officer, focusing on generating plans to avoid breaches
- A take-home booklet (below right) that aims to act as a reminder of the plans
- Follow-up text messages and phone calls.

While we expect that this program will increase compliance with ADVOs, we cannot say for certain as it is currently being evaluated.



5.3 BI approaches to system-wide changes

5.3.1 Distribute cases efficiently

The analysis of the Italian court system discussed above also found that the size of courts also contributed to inefficiency – courts that were too small or too large were found to be less efficient than those of moderate size. This finding is mirrored in an analysis of US courts, which found that high caseloads make judges less efficient.⁶⁸ These inefficiencies could be solved simply by hiring more judges, but this is a solution with a high economic and logistic upfront cost.

An analysis of case management efficiency at the US Equal Employment Opportunity Commission (EEOC) found that judges were responsible for all aspects of case processing, reducing the amount of time they had to dedicate to resolving cases.⁶⁹ The authors suggest that one remedy is considering the nature of the complaint before assigning it to a judge, and allowing judges to specialise in the cases they take on. For example, judges may specialise by industry (e.g. health industry specialist judges may have detailed knowledge of the medical field), or by case type (individual complainant vs. class action). We note that the FWC already assigns cases by location, and in some cases by industry – there may be scope to expand this process, particularly for some specialised industries with high levels of undertakings in enterprise agreements.

5.3.2 Reduce the administrative burden on claimants

How to reduce the administrative burden on the individual

The behavioural science literature shows that the administrative burden on individuals can be reduced (and picked up by the state) by:

- **Reducing the number of forms** that need to be filled out to access a service
- Simplifying forms by **removing unnecessary information**
- **Waiving or collecting fees as a percentage of the settlement**, particularly for low-income claimants (without significantly increasing their administrative burden) and for low-award claims

⁶⁸ Christensen, R. K., & Szmer, J. (2012). Examining the efficiency of the US courts of appeals: Pathologies and prescriptions. *International Review of Law and Economics*, 32(1), 30-37.

⁶⁹ Joun, E., Lyons, D., & Turner, D. (2018). Reducing delay to promote civil rights: How administrative judges at the EEOC can resolve employment discrimination complaints in a fair yet efficient manner.

Research shows that the degree of administrative burden placed on individuals affects the rate at which a public service is taken up. Public services and programs in which the administrative burden falls on the state, not the individual, tend to have high compliance rates, even when administration is complex.⁷⁰ For example, in the US, states that require more paperwork to access Medicaid benefits have lower rates of uptake.⁷¹ Giving individuals the option to fill in forms online, as the FWC does, tends to increase service uptake.⁷²

In the UK, BIT partnered with Jobcentre Plus to help job seekers find employment, and overhauled their client-facing administrative processes.⁷³ The intervention redesigned process-focused unemployment services to be more people-focused. Part of this redesign was reducing the amount of paperwork jobseekers had to complete, to prevent duplication of information and effort on the part of jobseekers. After the redesign, 3% (1.7 percentage points) more jobseekers found work, suggesting that simplifying paperwork to reduce the burden on individuals can increase the efficacy of that service.

An analysis of Employment Tribunal claims in the UK found that the number of claims dropped dramatically after the Tribunal introduced a tiered fee structure in 2013 (see Figure 21 below).⁷⁴ After 2013, claimants were required to pay fees at 2 points: when lodging the claim, and at the final hearing. The associated drop in the number of claims was much larger than anticipated, and in spite of the availability of fee waiving for low income claimants. The number of fee relief applications was far lower than anticipated. This may be due to the administrative burden of applying for relief, as this requires additional paperwork. The analysis also indicated that claims likely to result in a small award (median award of around £600) were most affected by the introduction of fees, as potential claimants judged the net award to be too small to be worth their effort.

⁷⁰ Herd, P., DeLeire, T., Harvey, H., & Moynihan, D. P. (2013). Shifting administrative burden to the state: The case of medicaid take-up. *Public Administration Review*, 73(s1), S69-S81.

⁷¹ Moynihan, D. P., Herd, P., & Ribgy, E. (2016). Policymaking by other means: Do states use administrative barriers to limit access to Medicaid?. *Administration & Society*, 48(4), 497-524.

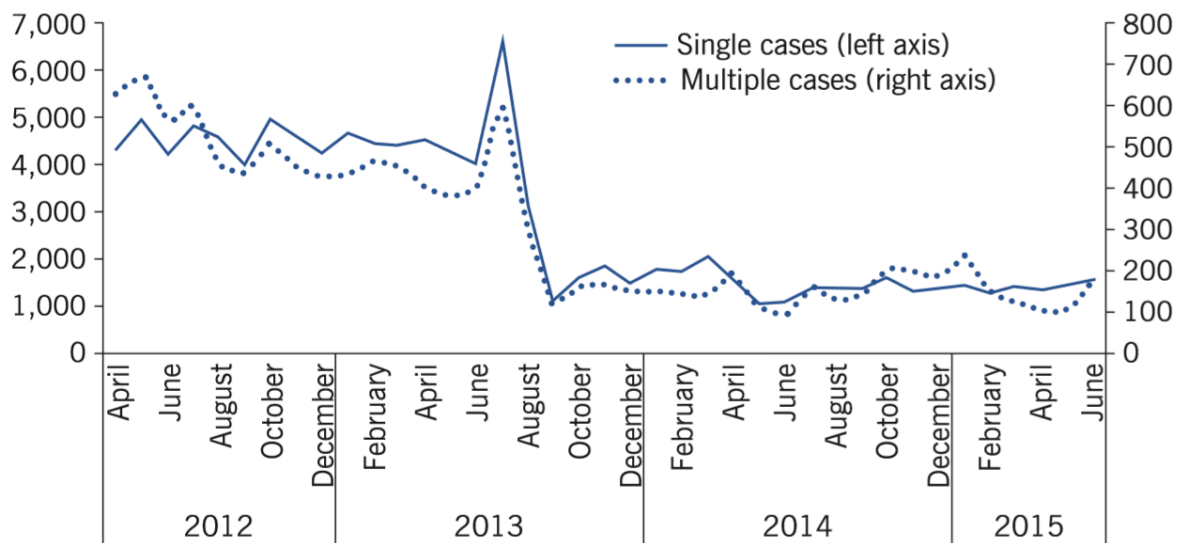
⁷² Herd, P., DeLeire, T., Harvey, H., & Moynihan, D. P. (2013). Shifting administrative burden to the state: The case of medicaid take-up. *Public Administration Review*, 73(s1), S69-S81.

⁷³ Applying Behavioural Insights to Labour Markets: How behavioural insights can improve employment policies and programmes.

<https://www.bi.team/wp-content/uploads/2018/11/TheBehaviouralInsightsTeam-LabourMarketsReport.pdf>

⁷⁴ Adams, A., & Prassl, J. (2017). Vexatious claims: Challenging the case for employment tribunal fees. *The Modern Law Review*, 80(3), 412-442.

Figure 21: Number of Employment Tribunal claims before and after the introduction of claim fees in mid-2013.⁷⁵



This analysis suggests that there are 3 options for combating the suppressive effects of fee. They are listed in order of likelihood to increase access (but also of likelihood to encourage weak claim applications):

1. Streamline the process of applying for a fee waiver as much as possible (e.g., pre-fill forms, simplify waiver form, encourage rapid decision turnaround).
2. Offer claimants 2 options: (1) pay fees upfront, or (2) the tribunal will collect a percentage of the settlement they are awarded (if any). Option (1) would always be the cheaper option in the event of a settlement.
3. Waive fees entirely.

⁷⁵ Latreille, P. The economics of employment tribunals. IZA World of Labor 2017: 331

5.3.3 Streamline alternative dispute resolution

How to streamline alternative dispute resolution

Analyses of labour court and employment tribunals suggest that alternative dispute resolution uptake can be increased, and processes streamlined, by:

- **Managing expectations** of both parties for pre-hearing settlements and tribunal awards
- **Collecting information on the expectations of both parties**, and using this information to encourage them to meet in the middle, or directing them to a hearing if there is little chance of successful alternative dispute resolution

One analysis of UK labour courts and employment tribunals found that expectations for the size of a settlement can negatively impact pre-hearing resolution. Workers who expect a significantly higher payout from a hearing are more likely to refuse a settlement.⁷⁶ The ideal situation in pre-hearing dispute resolution is that workers and employers meet in the ‘contract zone’ – that is, the range of settlement amounts that both parties would be willing to agree to overlap.

It may be possible to nudge workers and employers into a mutual ‘contract zone’ by managing their expectations. The FWC could communicate the average pre-hearing settlement and tribunal award for different types of cases⁷⁷ to both parties prior to a hearing to encourage alternative dispute resolution and to ease the burden on tribunals. The FWC could also collect information on what both parties expect from a settlement or award, and inform them of the gap between their expectation and the other party’s. For example, a company may be more willing to raise their offer if they are informed that the complainant expects only a small amount more than their offer. Alternatively, if there is no overlap between ‘contract zones’, cases can be directed to a hearing without expending resources on considering or engaging with alternative dispute resolution.

⁷⁶ Latreille, P. The economics of employment tribunals. IZA World of Labor 2017: 331

⁷⁷ Taking into account the type of complaint, industry, size of company, etc.

Appendix 1

Information architecture

