



FairWork
Commission

Behavioural Insights Project

**Improving compliance and timeliness of employers
responding to an unfair dismissal application**

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Contents

Background	3
Our objectives	3
What we did	4
What we measured	6
What we found	7
Limitations to consider	9
Next steps	9

Background

Unfair dismissal (UD) is the Fair Work Commission's (Commission's) largest jurisdiction with 16,558 UD applications lodged in 2019-20.

We know from our previous research that job dismissal can be an emotional and stressful experience for both employees and employers, leading people to often feel frustrated, anxious, and uncertain¹.

From a behavioural perspective, these emotions can sometimes impact a person's ability to think clearly about their case, make rational decisions, and comply with requirements. This can cause delays in receiving the necessary information from parties, leading to delays in the matter resolving.

We know that tribunal procedures and compliance requirements can sometimes be challenging to understand, particularly for those who are unfamiliar with employment relations and legislation. With a growing number of first-time and self-represented parties engaging with the Commission, we have undertaken a number of initiatives as part of our 'What's Next' program², including using **behavioural insights**, to improve access to justice and reduce complexity for our users.

Box 1: What is Behavioural Insights?

Behavioural insights (BI) draws on research from psychology, cognitive science and behavioural economics to explain and predict how people make decisions. BI 'nudges' are typically small, low-cost changes that attempt to influence people's judgment, decision or behaviour in a predictable way without eliminating options or significantly changing economic incentives. For example, nudges can be applied to existing correspondence and guidance material provided by the Commission to make it simpler and easier for parties to understand and comply with what is required, and to make more informed decisions about their case.

Our objectives

After the Commission receives a UD application, we write to the employer to inform them that they've been listed as a respondent in the matter and to ask them to tell us their side of the case. Respondents must complete and send us their response form ("Form F3: employer's response to an unfair dismissal application") and serve a copy to the applicant within 7 days of receiving the letter. It is important for parties to be aware of each other's

¹ Cube Group (2018) *Unfair dismissal User-experience research*.

<https://www.fwc.gov.au/documents/documents/resources/unfair-dismissal-user-design-research.pdf>

² Fair Work Commission (2018) *What's Next: the Fair Work Commission's plan to improve access and reduce complexity for our users*. <https://www.fwc.gov.au/documents/documents/resources/whats-next-improving-access-reducing-complexity.pdf>

views, since well-informed parties are more likely to have realistic expectations of their desired outcome and be able to resolve their matter quickly.

In 2019, **51%** of Form F3 responses were received 'on time' (i.e. within the 7-day timeframe) and around **19%** of matters required a follow-up letter be sent to respondents during the chase-up period (3 business days prior to their scheduled conciliation). Noncompliance can cause delays in the processing of matters and can also contribute to administrative and resourcing costs associated with following-up with parties.

With the UD jurisdiction continuing to be the Commission's largest source of applications, it is important to find innovative, low-cost solutions to improve compliance and reduce the need for follow-ups, improving timeliness and reducing administrative burden to parties and the Commission.

To help address this challenge, we conducted a randomised control trial (RCT) aimed at testing whether behaviourally informed versions of the service letter sent to respondents in UD matters could improve compliance and timeliness in returning their Form F3 response for conciliation.

Box 2: What is a randomised controlled trial?

Randomised controlled trials (RCTs) are considered the 'gold standard' for assessing causal impacts because the randomisation method forms the basis for determining the impact of an intervention compared to if nothing was changed. RCTs work by randomly assigning people into two or more groups – people in a '**treatment**' group receive an intervention (e.g. one of the modified letters) while people in the '**control**' group receive the business-as-usual experience (e.g. original letter). The effectiveness of the intervention is calculated by comparing the differences in outcomes between people in a treatment group versus people in the control group.

What we did

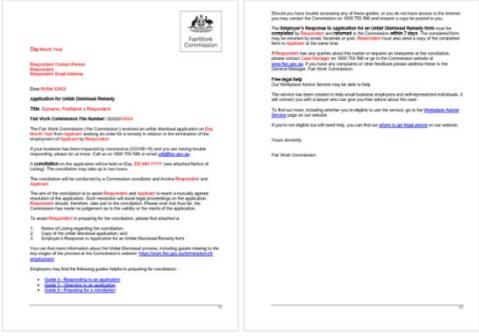
First, we established a working group with representatives from the Client Services, Case Management and Conciliation teams to better understand respondents' behaviours and potential barriers that may contribute to their noncompliance with the 7-day timeframe.

We identified 4 key behavioural insights relevant to the issue:

- **Cognitive overload** occurs when people's working memory is presented with more information than it can handle, which can affect decision making and increase the likelihood of mistakes.
- **Present bias** is the tendency to focus on smaller immediate rewards over larger future rewards.
- **Saliency** is the concept that people are more likely to respond to prominent information that captures their attention and is novel and accessible.

- **Social norms** are the behavioural expectations within a group that signal socially desirable or acceptable behaviours.

Based on these insights, we redesigned the current respondent service letter to test 4 different behaviourally informed versions (see table below). The Plain Language (PL) redraft formed the basis for the call-to-action, social norm and checklist versions, since the letter had already been approved for roll-out in the Commission's new case management system at the time of the trial. The 3 BI nudges were added to the PL letter, meaning that the content of the letters differed only by the intervention to be tested in each version.

Letter version	Intervention text
<p>Current letter (control)</p>	<p><i>Overview of original letter layout</i></p> 
<p>1. Plain Language (PL) redraft</p>	<p><i>Overview of redrafted pages</i></p> 
<p>2. Call-to-action (CTA)</p>	<p style="text-align: center;">Action required We need to hear from you within 7 days</p>
<p>3. Social norm</p>	<p>3 out of 4 employers are able to lodge their completed Form F3 on time. If you can't respond on time, please call 1800 759 566 or email udt@fwc.gov.au and tell us why.</p>
<p>4. Checklist</p>	<p>What you need to do</p> <ol style="list-style-type: none"> 1. Download and complete the Form F3 Employer response to unfair dismissal application. <input type="checkbox"/> 2. Lodge your completed Form F3 with the Commission along with any supporting documents. <input type="checkbox"/> 3. Send a copy of the completed form and supporting documents to <i>[applicant name]</i> at the same time. Use the contact details they've listed in their application form. <input type="checkbox"/>

In response to the COVID-19 pandemic, we also added a brief statement into each of the letters, including the current (control) letter. This statement acknowledged the potential impact of COVID-19 on businesses and encouraged respondents to contact the Commission if they had been impacted and were having trouble responding.

After designing the interventions, we developed the implementation and randomisation approach in consultation with the Case Management team. Four Case Managers were selected to support the implementation of the RCT. Each Case Manager was assigned to 1 of the 4 intervention letters and was responsible for sending that letter for all matters allocated to them during the trial period. The remaining 12 Case Managers in the team continued to send the current service letter as per normal (the control group).

The randomisation process was conducted at a staff level, whereby a Senior Case Manager randomly allocated matters to Case Managers who were rostered to process Notice of Listings and send service letters for that day. Respondents received 1 of the 5 letter versions based on the Case Manager randomly allocated to their matter.

What we measured

We examined 4 main outcomes of interest:

- **Response rate:** % of Form F3 responses received before the conciliation date
- **Follow-up:** % of matters requiring a follow-up 3 business days prior to conciliation
- **On time:** % of responses received on time within the 7-day timeframe
- **Response time:** average number of days taken to provide Form F3 response

We controlled for as many differences between groups as possible to better understand the true effect of the intervention letters. These included:

- whether the respondent received a follow-up
- whether the respondent had a representative
- the respondent's state location
- whether they were considered a small business (<15 employees)
- whether the respondent had an appointment to receive free legal advice through the Workplace Advice Service (WAS)
- whether the respondent service letter was sent after Stage 4 COVID-19 restrictions were announced for respondents based in Victoria.

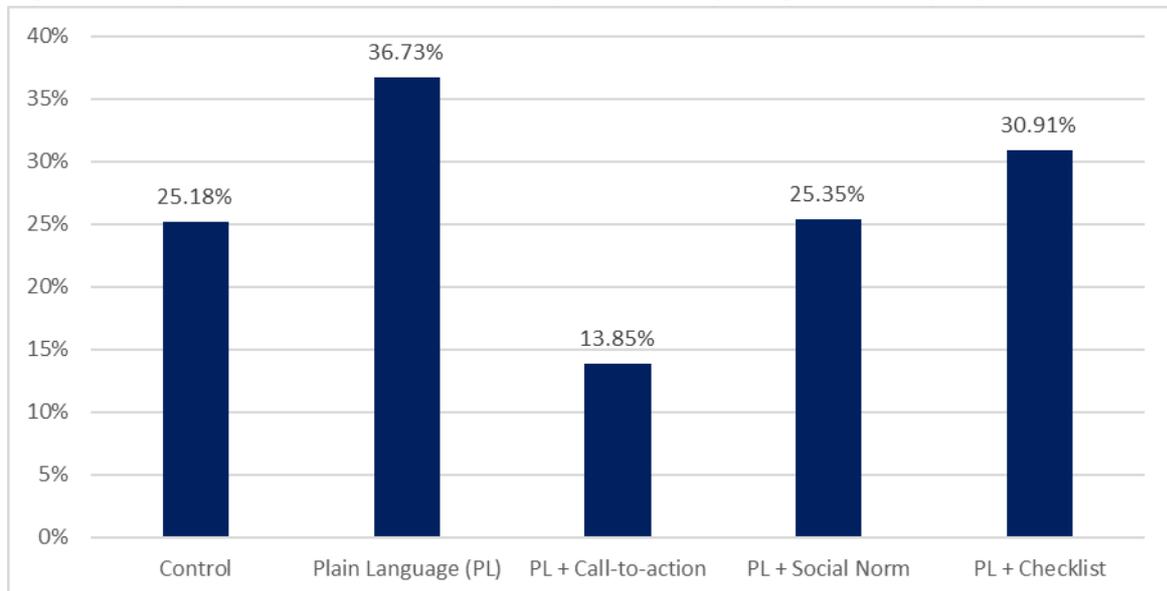
What we found

The trial ran from 17 June to 2 October 2020. 4,453 respondents were included in the final sample.

We conducted separate regression analyses to examine responses from all respondents, as well as sub-group analyses among small businesses only. The key findings are reported below.

As shown in Figure 1 below, small business respondents who received the PL letter with the call-to-action (CTA) required the least number follow-ups at the chase-up period (3 business days before the scheduled conciliation) for their missing Form F3 response. Although small business respondents who received the PL letter had a higher proportion of follow-ups compared to the control letter, this difference was not statistically significant³.

Figure 1. Proportion of small business respondents requiring a follow-up, by letter condition



Key Finding 1: Small business respondents who received the CTA letter were significantly less likely to require a follow-up

The PL letter with the CTA had a statistically significant effect among small businesses, reducing the odds of requiring a follow-up by 53% when compared to the original letter. The CTA letter also demonstrated a higher response rate, greater proportion of on-time responses, and lower average response times when compared to the original letter, though these differences were not statistically significant.

Key Finding 2: Unrepresented small business respondents who received the social norm letter were significantly more likely to respond on time

³ When we state a result is 'statistically significant', this means we judge the result to be a real effect, not due to chance. This assessment is based on the p-value ($p < 0.05$), which means there is less than a 5% risk of detecting a significant effect when there actually is no effect.

The PL letter with the social norm significantly improved timeliness among small business respondents who did not have legal or other representation; those who received the social norm letter were almost 9 times more likely to comply with the 7-day timeframe than those who received the original letter.

Key Finding 3: Small business respondents who received the checklist letter were significantly more likely to require a follow-up

The PL letter with the checklist had an unintended consequence among small business respondents; those who received the checklist letter were twice as likely to require a follow-up 3 business days prior to their conciliation when compared to those who received the original letter. While this finding suggests checklists may be less effective at improving *timeliness* of responses, this trial did not directly examine the *quality* of responses. Future research should investigate in a controlled study whether checklists can improve compliance in situations where accuracy of information or compliance with certain steps in a process is paramount.

Key Finding 4: Intervention letters did not lead to significantly better outcomes among all respondents

Among the full sample of respondents, we found no significant difference in the effectiveness of the intervention letters, however, as with the small business sub-group, the PL letter with the CTA consistently demonstrated better overall outcomes when compared to the original letter.

Key Finding 5: All letters in the 2020 trial improved timeliness of responses compared to 2019

Findings suggest there may be external factors⁴ influencing the results since all letters, including the original respondent service letter, improved in timeliness compared to 2019. Respondents in the trial took on average 9.05 days to provide their Form F3 response, compared to 12.75 days in the same period in 2019.

The most significant event of 2020 was undoubtedly the COVID-19 pandemic, which had an extraordinary impact on businesses across the country. The subsequent increased focus on industrial relations (IR), along with the disruption to regular trading, may have motivated employers to prioritise IR activities and have freed up time and resources for businesses to respond to matters with the Commission.

Another potential factor influencing the trial outcomes in 2020 is the addition of the COVID-19 statement into the trial letters. This contact initiated by the respondent may have provided an early opportunity for Commission staff to remind and encourage respondents to send us their Form F3 response as soon as possible.

Lastly, the listing period for UD matters in 2020 was relatively short compared to the same period in 2019 (average days to listing was 18.52 compared to 30.42 days). As a result, respondents in the trial may have felt a greater sense of urgency or time pressure to respond since their conciliation was, on average, only 2-3 weeks away. The shorter listing

⁴ External factors are factors that are not manipulated as part of an experiment, but they may exert some influence on the dependent variable under study, causing a spurious association between the independent and dependent variables.

timeframe also meant respondents were being followed-up by Case Managers earlier than they would have been in 2019, which may explain the higher proportion of follow-ups recorded in 2020.

Limitations to consider

These findings should be interpreted with consideration of the project's limitations, in particular the randomisation approach. While matters were randomly allocated to Case Managers, due to the task-based resourcing model adopted by the Case Management team in response to COVID-19, not all staff were rostered to process Notice of Listings and send respondent service letters each day. As a result, we cannot rule out the possibility of selection bias in the current approach since a true random allocation procedure was not used (e.g. computer-generated random allocations). Randomisation is one of the cornerstones of RCT design and requires strong methodological rigour to reduce certain sources of bias and minimise the risk of confounding factors influencing the results.

While this was a known limitation of the current design given the operating environment and process for sending the respondent service letter, this highlights the importance of continuing to pursue true randomisation in our future trials (e.g. using system-generated matter numbers to randomly assign people to control or intervention groups).

Next steps

Results from the trial demonstrate the effect that low-cost behavioural interventions can have on employers responding to unfair dismissal applications. In particular, the combination of Plain Language techniques and the call-to-action nudge significantly reduced the likelihood of a follow-up among small business respondents. This means our Case Managers are able to spend less time following up respondents in the days leading up to a conciliation, and respondents are able to direct their focus to preparing for the conciliation itself. In light of these findings, we will implement the call-to-action as part of our suite of new Plain Language unfair dismissal correspondence templates being rolled-out in our case management system. The BI team will also share findings with other jurisdictions, such as general protections and wage dispute claims, to see if insights gleaned from this research can be applied to other existing and future sources of work.