



# *what's next?*

The Fair Work Commission's plan  
to improve access and reduce  
complexity for our users



“It should never be forgotten that tribunals exist for users and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases.”

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Sir Andrew Legatt - (2001)

*Tribunals for Users - One System, One Service,  
Report of the Review of Tribunals*



What's Next is defined by its focus on understanding and responding to the changing needs of our users. Drawing on the latest public sector thinking in areas such as user experience, behavioural insights and co-design, the commitments in this document will ensure the Commission continues to provide a world-class dispute resolution service to the Australian community.

At the Fair Work Commission, we are determined to continue to improve our services to the Australian community.

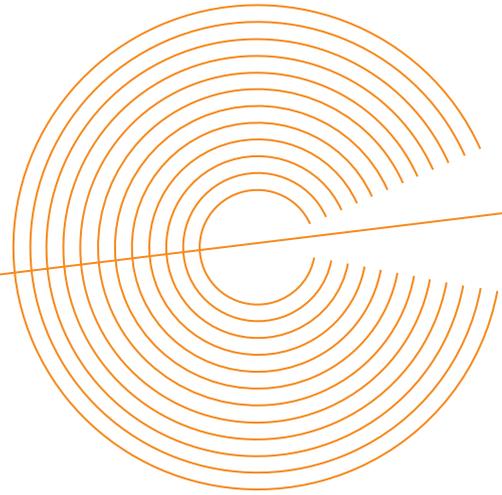
This document sets out the changes we will make in the next 12 months as part of our new program: *What's Next: the Fair Work Commission's plan to improve access and reduce complexity for our users*. The community and our users – employees, employers and their representatives – will be at the centre of this program.

The Commission's work has changed significantly in recent years. We have fewer regulars – many parties now are self-represented, first time participants who are unfamiliar with the Fair Work legislation and Commission processes.

In response to this shift, the Commission initiated Future Directions, a reform program to improve access to justice, promote efficiency, increase accountability and engage with industry. Between 2012 and 2017 the Commission implemented more than 50 initiatives, including:

- » guides and tools such as benchbooks for unfair dismissals, general protections and enterprise agreements
- » short video 'virtual tours' to help familiarise newcomers to the Commission's premises and our processes
- » a program to provide individuals and small businesses with access to free legal advice on jurisdictional objections in unfair dismissal cases
- » online access to audio files of Commission hearings.

These improvements provide a strong platform for the next wave of change.



## Greater support for small business and individual users

A key indicator of access to justice is whether small business and individual users are able to resolve disputes simply and quickly without the need for paid representation. In the year ahead, we will look at ways to provide more support for applicants and respondents in the early stages of unfair dismissal and general protections cases.

We recently published two research reports that examine how employees and small business employers experience our services:

- » User Experience of Unfair Dismissal Matters, prepared by specialist user experience practitioners Cube Group. Cube Group conducted user experience workshops with a focus on self-represented respondents from small and medium-sized enterprises (i.e. fewer than 50 employees) and self-represented applicants. The focus of the research was to provide useful, specific and practical insights about the Commission's unfair dismissal case management process.
- » Working Better for Small business, prepared by Bruce Billson of Agile Advisory. Agile Advisory consulted with small business operators and their representatives to identify how the tribunal's procedures and resources might better meet the needs of small business.

Based on this research, it is clear that early, personalised support can help address the uncertainty and confusion many self-represented employees and employers feel at the start of a claim about dismissal.

As a first step, we will ensure that the first contact with the Commission for an employee applicant or an employer respondent in an unfair dismissal or general protections dismissal is a phone call from a trained staff member. We want to provide self-represented employees and employers with the information they need at the time and in the form they need it. This kind of support allows preliminary issues to be identified and considered more quickly, supports informed decisions, builds trust in the process, and assists all participants.

Clear, timely and consistent information is essential to providing an accessible, fair and efficient dispute resolution service, particularly for those who are self-represented.

This work will draw on the successful case management service the Commission provides to applicants and respondents in anti-bullying cases, on which both participants and other stakeholders have reported positively. But the Commission receives 20 times more unfair dismissal and general protections dismissal applications than anti-bullying applications, so there is a need to adapt to scale.

Our recent user experience research has given us fresh insight into the information needs of our users. We will conduct a major review to ensure that users are provided with the information they want, at the time they need it, in plain language and in the most useful form. As part of this process, we will review our Rules, forms, correspondence, formal directions, notices and the guidance material on our website to ensure it is accessible, accurate and consistent. This significant undertaking will start later this year with unfair dismissal information. We will consult broadly with all participants.



## Using behavioural insights to improve service delivery

Governments and agencies around the world are applying behavioural insights to improve the targeting and delivery of public services. Behavioural insights draw on research from psychology, human centred design and behavioural economics to explain and predict how people make decisions. These insights are then used to 'nudge' behaviour, such as to improve attendance at court hearings or to increase compliance with directions. Simple changes in how requests are expressed and information conveyed can have a dramatic impact on how effective the communication is. Research shows that small changes in processes can significantly improve outcomes.

In Australia, behavioural insights trials are being conducted across policy areas as diverse as vaccination rates, organ donation, payment of fines and recruitment rates for regional teachers. A behavioural insights approach has been shown to reduce domestic violence court non-attendance in New South Wales, and has improved the application process for Family Violence Intervention Orders in Victoria. These improvements have reduced the burden on applicants and pressure on the court system.

The Behavioural Insights Team (BIT) is a world leader in this field. Established in the UK Cabinet Office in 2010, it has become a social purpose company with offices around the world. In 2016-17 the BIT conducted 163 trials in 25 countries. We have engaged BIT to deliver training to our staff in order to build capacity to further improve our services and processes. We will also engage BIT to conduct a number of trials involving our processes. Small things can make a big difference.

For example, rescheduling hearings because of the non-attendance of a party results in inconvenience and cost for others. Changing the wording of a text message reminding parties about an upcoming Commission hearing can increase attendance and reduce the need to reschedule. Early priorities are:

- » to increase the number of compliant applications for the approval of enterprise agreements
- » to assist small business employers and employees to understand and apply modern awards
- » to help applicants and respondents to understand unfair dismissal processes.

We will evaluate each trial and publish the results.

## eCase — Transforming case management

We will soon launch a new online case management system, eCase, which is a quick, simple tool that allows employees, employers and their representatives to access information about their case at any time and from any device. They can upload their information, download information from other parties, check the progress of their case and receive SMS reminders of upcoming key events and due dates.

Users of eCase can:

- » pre-populate forms so the same information doesn't have to be entered multiple times
- » save draft applications and send them to others for review and verification before being lodged
- » introduce an account administration function so participants such as companies, law firms, unions and employer organisations can have oversight of all their cases
- » use digitised smart forms
- » ensure the addresses and ABNs of businesses are valid.

A scheduling 'engine', named Fair Tasker, will enable cases to be scheduled taking into account the needs of participants, the availability of interpreter services, case urgency and

resourcing considerations. Employees and employers will have a greater say about when unfair dismissal conciliations are scheduled, with parties able to identify dates that aren't suitable before the case is scheduled.

eCase has been designed drawing on more than 500 sessions with internal and external users, along with other user feedback obtained over the past year.

eCase will also enable the Commission to explore further opportunities to use technology to assist our users to resolve disputes, including online dispute resolution (ODR).

Combining our expertise in dispute resolution with emerging ODR technology could transform the way employers and employees understand and resolve their differences.

An online tool could enable parties to exchange information about their respective positions and, if common ground exists, resolve the dispute online by themselves. Sophisticated data analytics can provide tools and information to help participants form a realistic view about settlement options.

Any ODR tool developed could have wider application, for example to participants in the gig economy.

## Expanding access to free legal advice

Free legal advice can improve access to justice, reduce participants' anxiety and confusion, and avoid unnecessary costs for all where an application does not have merit.

Since 2012 the Commission has partnered with community legal services and legal aid commissions to deliver free legal advice to employees considering or making an application to the Commission. Such access has been provided through a pilot with the Employment Law Centre of Western Australia, and later through Workplace Advice Clinics run through partnerships with JobWatch, Springvale Monash Legal Service, Marrickville Legal Centre, Legal Aid New South Wales and Legal Aid Queensland.

Since 2013, we have also facilitated access to free legal advice for employees and small business employers preparing for jurisdictional hearings in Melbourne and regional Victoria. This service, called the Victorian Pro Bono Program, has been delivered in partnership with law firms and other partners. It supports applicants and respondents through a complex part of the unfair dismissal process.

Building on the success of these programs, in 2018-19 we will launch a national pro bono program – the Workplace Advice Service (WAS). With the continued support of law firms, community legal centres, legal aid commissions and other partners, the program will be expanded progressively around Australia, allowing us to reach employees and small businesses who are unable to afford legal advice.

The WAS will provide:

- » early assistance in unfair dismissal, general protections and anti-bullying cases
- » advice on unfair dismissal jurisdictional issues
- » in broader public interest cases, representation in unfair dismissal hearings.

The WAS will also include a new pilot program with Justice Connect, launched in July 2018, to provide eligible employees in the Australian Capital Territory and New South Wales making or considering a general protections application with access to free legal advice.

The WAS will start in Victoria and New South Wales, and will later expand to other states and territories. The Workplace Advice Clinic will continue to operate in Brisbane until the WAS starts in Queensland.

Independent advice delivered through these programs can help employees and small business employers make informed decisions, and can help them understand the implications of continuing with a claim that is unlikely to succeed. The provision of early and independent legal advice can save parties time and money, and can help use our resources more efficiently.

A full list of our pro bono partners is at the end of this document.

## Working with parties

As part of the 4-yearly review of modern awards, we are rewriting a number of modern awards in plain language. This will enable employers and employees to understand and apply the correct wages and conditions in their workplaces. To complement this work, we will develop short, two to three page summaries of the modern awards in the aged care, clerical, retail, hospitality, restaurant and hair and beauty industries.

The summaries will be short, accessible documents that set out key award provisions and provide explanations, examples and links to resources. While not legal instruments, they will provide an easy to understand summary of key rights and obligations.

Awards in these industries were selected because they have a high proportion of employees paid at the award rate and have substantial small business coverage. For example, employees in the retail trade, accommodation and food services industries account for one-third of all award-reliant employees, and there are more than 70,000 small businesses in the retail trade sector alone.

We will consult widely throughout the summaries' development.

The Commission is also working with parties to improve processing times for applications to approve enterprise agreements.

While a number of factors have impacted on timeliness, the key contributor is the significant increase in applications identified as potentially not meeting the statutory requirements. The incidence of agreements requiring undertakings has tripled since 2013.

We understand the impact that delays can have on employers and employees, and are working hard to reduce the time from lodgment to approval of agreements, particularly where undertakings are required.

On 1 July 2018 the Commission implemented revised timeliness benchmarks for the approval of single-enterprise agreements:

Applications that are approved without requiring undertakings:

- » 50% approved within 3 weeks
- » 100% approved within 8 weeks.

Applications that require undertakings or cannot be approved; contested applications and applications requiring a hearing:

- » 50% to be finalised within 10 weeks
- » 100% to be finalised within 16 weeks.

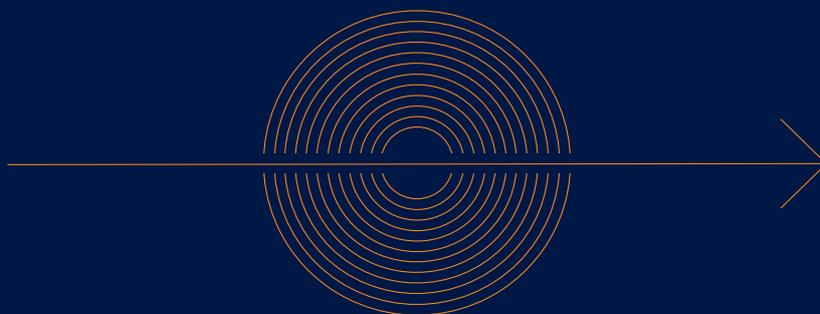
To help improve our efficiency and help applicants lodge compliant applications, we have developed:

- » an agreement date calculator
- » an automated Notice of Representational Rights generator
- » new information materials such as the 10 tips for agreement making.

While these efforts have shown positive results, there is scope for further improvement. For example, we have set up a process to hear directly from employers, unions and employer organisations about their experiences and ideas to improve our agreement-approval processes. This research is generating ideas to improve case management practices and information resources.

A separate statement will be published shortly explaining the factors that have affected timeliness and what we have done to improve our performance.

The Commission is one of the nation's oldest institutions, but even the most successful institutions decline in relevance if they fail to innovate and evolve. Building on the achievements of Future Directions, What's Next demonstrates our ongoing commitment to innovation and reform, driven by the needs and experiences of our employees, employers and their representatives.



## Workplace Advice Service Partners

AiGroup	Holman Webb	Legal Aid NSW
Arnold Bloch Leibler	HWL Ebsworth	Legal Aid QLD
Ashurst	Industrial Bar Association of the Victorian Bar	Marrickville Legal Centre
Australian Business Lawyers & Advisors	J N Zigouras & Co. Lawyers	Mills Oakley
Bartier Perry Lawyers	JobWatch Inc.	Minter Ellison
Bartlett Workplace	Justice Connect	Norton Rose Fullbright
Carroll & O'Dea Lawyers	K&L Gates	NSW Bar Association
Corrs Chambers Westgarth	Kelly Workplace Lawyers	Rigby Cooke Lawyers
Danny King Legal	Kennedys	Russell Kennedy Lawyers
Herbert Smith Freehills	Lander & Rogers	Seyfarth Shaw
Holding Redlich		Springvale Monash Legal Service