



President's statement

Update on applications for approval of enterprise agreements in the Building and Construction Industry

Justice Hatcher, President

Sydney, 30 July 2024

[1] This statement deals with the Fair Work Commission's approach to the approval of enterprise agreements in the building and construction industry.

[2] In recent media reports, allegations have been made in relation to the making of enterprise agreements in the building and construction industry involving branches of the Construction and General Division of the Construction, Forestry and Maritime Employees Union (CFMEU). These allegations may involve conduct that contravenes the *Fair Work Act 2009* (Cth) (FW Act) and impacts upon satisfaction of the genuine agreement requirements for approval of enterprise agreements in Part 2-4 of the FW Act.

[3] In light of this, the Commission is taking additional measures in relation to enterprise agreement approval applications in this industry. These measures include:

- allowing interested parties to provide additional information to the Commission as a part of its consideration of these applications;
- establishing a dedicated webpage; and
- seeking additional information where required.

[4] These additional measures will apply to the following applications made under the FW Act:

- s 185 applications for approval of a greenfields, single- or multi-enterprise agreement, and
- s 210 applications for approval of a variation of an enterprise agreement

in the building and construction industry and for which the CFMEU or any branch in its Construction and General Division is the applicant, employee bargaining representative, or signatory.

Publication of enterprise agreement approval applications

[5] The Commission will maintain a dedicated [CFMEU construction agreements in progress](#) webpage to publish enterprise agreement approval applications which meet the criteria in paragraph [4].

[6] For context, the Commission has published every enterprise agreement lodged for approval on its website since 2010. Currently, these are published on the [Agreements in progress](#) webpage. The Commission also publishes information about applications to vary enterprise agreements. Publishing enterprise agreements assists the Commission by alerting persons who may be able to assist the Commission to inform itself on matters pertaining to

the approval of the application before it. Since October 2020, the Commission has included additional information about the status of the approval process for each application to further improve openness and transparency.

[7] The publication of enterprise agreements assists the Commission to operate in an open and transparent manner and to be properly informed when making decisions. It provides an opportunity for any interested persons to make submissions or provide information in connection with approval of an enterprise agreement.

[8] The dedicated webpage is similar to the existing ‘Agreements in progress’ page on our website. The Commission will publish details of the enterprise agreement approval application and a copy of the enterprise agreement for which approval is sought. If an application is listed for hearing, this information will be added to that webpage. If interested persons wish to raise concerns or have specific enquiries, they can do so via the details provided on that webpage.

Agreement approval applications before the Commission

[9] For enterprise agreements lodged on or after 10 July 2024, the Commission will write to all parties to request documentary evidence, where relevant, of the steps taken in relation to the agreement-making process. Parties to these applications will, as a general rule, be given three business days to provide the relevant information.

[10] As with any application before the Commission, where any concerns are raised, the relevant Commission Member may consider them as part of the approval process. They may also conduct a hearing of the application in relation to those concerns or where there are contested facts. The Commission will continue to approve applications where satisfied that the requirements of the FW Act have been met.

Timeliness of agreement approval applications

[11] Over recent years, the Commission has consistently met or surpassed its timeliness targets in relation to the approval of enterprise agreements. The median timeframe for approval of enterprise agreements for the 2023-24 financial year was 16 days. Further, 95% of enterprise agreements were approved within 32 working days in this period. More information on our [approval timelines for enterprise agreements](#) can be found on our website.

[12] The Commission is dedicated to approving enterprise agreements in a timely manner. However, we anticipate that these additional measures may impact on the timeliness of approving enterprise agreements in the building and construction industry. To provide interested parties the opportunity to raise concerns or lodge submissions in relation to these applications, the Commission may take some additional time to determine them. As such, parties to these applications may anticipate some delays in them being determined. I appreciate your patience as the Commission looks to balance the need for timely approval with the requirement to ensure statutory compliance.

Concerns about contraventions of the FW Act

[13] The Fair Work Ombudsman is undertaking investigations into the conduct of the CFMEU relating to possible FW Act contraventions.

[14] If you are aware of any such conduct, including adverse action, coercion, misrepresentation and/or failure to comply with requirements for disclosure of benefits in relation to an enterprise agreement for a registered organisation, these should be reported to the Fair Work Ombudsman.

[15] Reports can be made using the various methods for contacting the Fair Work Ombudsman provided on the [FWO: Contact us](#) webpage.

PRESIDENT