



FairWork
Commission

Annual Report

Access to Justice

2018-19

Fair Work Commission

Australia's national workplace relations tribunal

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Visit www.fwc.gov.au for more information about the Fair Work Commission.

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Letter of transmittal



Australia's National Workplace
Relations Tribunal

26 September 2019

The Honourable
Justice Iain Ross AO
President

Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations
Parliament House
Canberra ACT 2600

Bernadette O'Neill
General Manager

Dear Minister

We are pleased to present to you the annual report of the Fair Work Commission for the financial year ended 30 June 2019.

This report is provided pursuant to s.652 of the *Fair Work Act 2009* and in accordance with s.46 of the *Public Governance, Performance and Accountability Act 2013* and the Public Governance, Performance and Accountability Rule 2014.

Yours sincerely

Justice Iain Ross AO
President

Bernadette O'Neill
General Manager

Readers' guide

This annual report informs the Australian Parliament and public about the Fair Work Commission's performance and compliance with its obligations in the financial year ending 30 June 2019.

Part 1 – Overview

The overview includes reports from the President and General Manager and provides information about the Commission, including its organisational structure, Members, staff and stakeholders.

Part 2 – Performance

Part 2 provides information about the Commission's work and performance during 2018–19. It includes a detailed discussion of the Commission's operational performance.

Part 3 – Annual performance statements

Part 3 provides information about the Commission's performance during 2018–19. It includes an outline of the Commission's performance framework and details the Commission's performance against intended results and performance criteria set out in its portfolio budget statements and corporate plan.

Part 4 – Management and accountability

Part 4 reports on the Commission's internal operations, including corporate governance, external scrutiny, human resources management and financial management. It also reports against certain legislated annual reporting requirements.

Appendices and references

Six appendices provide detailed information to complement the main report. Appendices A to D provide details of Members, panels and Members' activities, and additional tables and figures, including applications lodged with the Commission in 2018–19; Appendix E comprises the 2018–19 financial statements; Appendix F reports on entity resources; Appendix G sets out other mandatory information; and Appendix H shows where each annual reporting requirement is addressed in this annual report.

At the back of the report is information to help readers – including a glossary, a list of acronyms and abbreviations, and an index – and contact details for the Commission.

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1 Overview

- President's introduction
- General Manager's overview
- About the Commission



President's introduction

I am pleased to introduce the Fair Work Commission's annual report for 2018–19.

The 2018–19 reporting period has been another busy and productive one for the Commission. The Commission has undertaken significant work in relation to our access to justice initiatives, while the continued improvement of our core business functions remained a focus throughout the year.

Agreements

The Commission is required to ensure that each agreement and approval application complies with the various requirements of the *Fair Work Act 2009* (Fair Work Act). From late 2016, all approval applications have been determined by Members with the assistance of an administrative 'agreement triage' process. The triage process was designed to increase rigour in assessing all agreements and approval applications in order to increase consistency in the decision-making process.

Rigour in the decision-making process is important. The consequences of failing to identify either a technical or a substantive defect in the agreement making process or the agreement itself are significant. An agreement invalidly approved exposes all parties to it to a collateral attack in the

courts, creating uncertainty as to whether the agreement is a legal nullity.

The volume of agreement applications assessed as non-compliant has more than doubled since 2016. During 2018–19, 66 per cent of agreements approved required undertakings to resolve deficiencies, up from 35 per cent three years earlier. This has contributed to a deterioration in our timeliness performance.

At the date of submission of this annual report, in September 2019, the Commission has successfully resolved the temporary decline in timeliness for approving agreements caused primarily by the increase in applications assessed as non-compliant or incomplete.

Assisted by the Enterprise Agreement User Group, the Commission took decisive action during 2018–19 to improve timeliness. Changes in operational practices, including streamlining communication with parties, increase resources and additional information materials, have resulted in a reduction in agreement matters on hand from a peak of 2,063 applications in January 2019 to less than 550 applications.

Based on performance for agreements lodged and finalised in the **last seven months**, compliant and complete

applications are being approved within a median of **17 days from lodgment**. Similarly, all applications, simple and complex, lodged and finalised in that period have been approved in a median of **34 days from lodgment**.

On 12 December 2018, the *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018* (Amending Act) revised s.188 of the Fair Work Act to provide a mechanism for the Commission to conclude that an enterprise agreement has been 'genuinely agreed' despite 'minor procedural or technical errors'. This amendment has given the Commission the power to approve agreements that would otherwise have to be dismissed.

The best way of improving timeliness is for the Commission to be able to approve agreements that are complete and compliant at the time of lodgment. That is why the Commission published a guide this year to help employers and employees lodge compliant applications for enterprise agreements, including how to avoid common problems that delay the approval process.

The guide helps employers, employees and their representatives to lodge agreement approval applications that meet all of the statutory requirements so they can be approved quickly by the Commission.



There is further information about our initiatives to improve the timely approval of agreement applications on page 74.

What's Next

The work of the Commission has changed significantly in recent years. There are now fewer regular clients, with many parties more likely to be first-time participants in the Commission's jurisdiction. As a result, one of our main aims has been to focus on better understanding and responding to the changing needs of our users.

In July 2018, the Commission launched *What's Next*, the Commission's plan to ensure it continues to provide a world-class dispute resolution service. The message at the core of *What's Next* is simple – listen to and meet the needs of all of those who use our services. Building on the foundations of *Future Directions*, *What's Next* is the latest in a series of reforms the Commission has undertaken.

President's introduction (cont.)

What's Next brings together a suite of initiatives designed to make it easier for employees and employers to access our services. Key initiatives and activities with stakeholders included greater support for small business and individual users, working more closely with parties and expanding our access to free legal advice.

Workplace Advice Service

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.

The Workplace Advice Service, the Commission's national pro bono program was launched on 30 July 2018. The service provides eligible employees and small business employers with access to free legal advice that aims to help parties make informed decisions and better understand the implications of continuing with a claim that may be unlikely to succeed.

The service has expanded around the country and has now partnered with more than 60 law firms, community legal centres and legal aid bodies. The service consistently receives positive feedback from users and has provided approximately 1,000 hours of free legal advice to eligible parties. Its success would not be possible without the

generous support and participation of our participating partners. I take this opportunity to thank them for their service – without their support and time, we could not deliver this most valuable assistance to the community.

Plain language

We are working hard to improve the resources we provide to employers and employees to enable them to help themselves. It is vital that the information we provide is easy to find and in plain, clear language.

With this in mind, the Commission is undertaking a major review of all our correspondence, notices and guidance materials to ensure they are accessible, accurate and consistent. This process has already reviewed and redrafted in plain language the 90-plus template letters and notices that we send to employers and employees as part of the unfair dismissal process.

The purpose of redrafting these letters and notices is to address the uncertainty and confusion that our research shows is experienced by many self-represented employees and employers. Clearer correspondence will assist those parties more effectively, build trust in the process and support all users to make

informed decisions about the cases they are involved in. We expect to finalise and introduce the plain language letters in the second half of 2019.

Behavioural insights

Behavioural insights (BI) draws on behavioural 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 do not always follow through with their intentions. Decision making can be affected by seemingly unconnected things, such as how information is presented or what others are doing.

BI has the potential to improve the services we provide the community by helping parties to make informed, timely decisions about their case, particularly where employers and employees are self-represented.

We are using BI to improve compliance and timeliness of unfair dismissal applications and to increase compliant enterprise agreement applications.

Modern awards

The 4 yearly review of modern awards has been an enormous undertaking that has

involved more than 1,000 hearings and hundreds of decisions and statements. On 12 December 2018, the section of the Fair Work Act covering the 4 yearly review was repealed by the *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018* (Repeal Act) with effect from 1 January 2018. This means that there will not be any more 4 yearly reviews of modern awards, but the Commission will complete the current review.

Regional allocation

The proportion of collective matters that the Commission deals with has declined in recent years. This has resulted in a progressive reduction in the number of industry panels and in the volume of matters dealt with by those panels. In April 2019, some 47 years after their establishment, the Commission replaced the industry panels with a regional allocation system.

Relevant matters are now allocated to Members based on their location in one of three regions:

- Region 1 – New South Wales, Queensland, Northern Territory and Australian Capital Territory
- Region 2 – South Australia and Western Australia
- Region 3 – Victoria and Tasmania.

President's introduction (cont.)

This change aims to improve national performance by providing clear responsibility and greater internal oversight of work allocated to Members, while also streamlining administrative processes and reducing costs.

External parties have experienced little change in service delivery, but we are confident that changes will yield benefits for the efficiency of the Commission and for those who use our services.

Small Business Reference Group

To enable us to establish whether our improvements are hitting the mark we have established a Small Business Reference Group, which includes representatives of the small business community, including government, advisers to small business, and industrial associations with small business membership. This group serves as an ongoing contact point between the Commission, small businesses and those who represent them, so that we can hear about the challenges facing small business and what we can do to further improve our services.

Departing Members

Commissioner Anna Lee Cribb retired in the last year. I take this opportunity to acknowledge Anna Lee for her contribution to the Commission and to the Australian community.

Thank you

I look forward to the next reporting period, when we will continue to innovate and improve our services to make sure the Commission meets the ongoing needs of business, government, the community, employer and union organisations, and individuals alike.

Finally, I thank the Commission's dedicated and hardworking Members and staff across Australia. All that has been achieved in 2018–19 would not be possible without their ongoing dedication to serving the Commission and, through it, the Australian community.



Justice Iain Ross AO

General Manager's overview



I am pleased to provide this report for the 2018–19 financial year.

Overall, applications to the Tribunal have been stable in the past year, with a 5 per cent increase in the number of hearings and conferences held across Australia.

In December 2018 the Commission welcomed six new Members to the Tribunal.

We met all our performance measures as detailed in the Commission's annual performance statements in this report. Almost 80 per cent of unfair dismissal applications that were conciliated by staff were resolved by the employee and employer reaching agreement.

At the same time, managing within our available resources is challenging, and we ran a small funded deficit of \$1.519 million excluding depreciation and amortisation in 2018–19.

While recent years saw a reduction in the Commission's timeliness in approving enterprise agreements, I am pleased to report that the turnaround time significantly improved during the second half of the reporting period, from a median of 76 days to a median of 35 days. This includes all agreements approved: ranging from fully compliant applications at lodgment which can

be dealt with quickly to agreements that require multiple undertakings to be approved or are contested. There is further discussion on how the Commission has achieved this significant improvement in the agreements section of this report.

In the year ahead, we will continue to work with our stakeholders to assist parties lodge compliant agreements and approval applications. This is the most sustainable way to further improve our timeliness performance.

We will also launch a new case management system (initially handling new unfair dismissal applications) that will allow applicants and their representatives to lodge online and view previously lodged applications. We will continue to implement our plan to improve access and reduce complexity for our users, entitled *What's Next*, which includes a number of reforms that provide greater support for small business and individual users. Under the plan, we are

General Manager's overview (cont.)

using behavioural insights to improve service delivery, expanding access to free legal advice, and reviewing our information materials so that employees and employers are provided with the information they want, at the time they need it, in plain language and in the most useful form.

I express my appreciation to Members and our staff for their dedication and commitment to the important work of the Commission and to our ongoing efforts to improve the services we provide the Australian community through listening to our users.



Bernadette O'Neill

About the Commission

Role

The Commission is Australia’s national workplace relations tribunal. It was established by the *Fair Work Act 2009* (Fair Work Act) and is responsible for administering the provisions of the Fair Work Act.

The Commission’s powers and functions include:

- dealing with unfair dismissal claims
- dealing with anti-bullying claims
- dealing with general protections and unlawful termination claims
- setting the national minimum wage and minimum wages in modern awards
- making, reviewing and varying modern awards
- assisting the bargaining process for enterprise agreements
- approving, varying and terminating enterprise agreements
- making orders to stop or suspend industrial action
- dealing with disputes brought to the Commission under the dispute resolution procedures of modern awards and enterprise agreements
- determining applications for right of entry permits
- promoting cooperative and productive workplace relations and preventing disputes.

The Commission and General Manager also have responsibilities in relation to the registration, amalgamation and cancellation of registered organisations and the making and alteration of their rules under the *Fair Work (Registered Organisations) Act 2009* (Registered Organisations Act).

The Commission’s purpose, as included in its corporate plan, and outcomes and programs as specified in the 2018–19 portfolio budget statements are set out in the annual performance statements at page 99.

Structure

The Commission consists of the Tribunal – the President, Vice Presidents, Deputy Presidents, Commissioners and expert panel members – supported by a General Manager and administrative staff. Figure 1 shows the Commission’s structure.

About the Commission (cont.)

Figure 1: Organisational structure at 30 June 2019



* Project Sponsor eCase.

** Temporary change for the life of the eCase project.

Members

The Commission is headed by the President, the Hon Justice Iain Ross AO, who is also a Judge of the Federal Court of Australia.

Commission Members perform quasi-judicial functions under the Fair Work Act, including conducting public hearings and private conferences for both individual and collective matters. They also perform certain functions under the Registered Organisations Act concerning federally registered unions and employer organisations.

Members are independent statutory office holders appointed by the Governor-General on the recommendation of the Australian Government. They are appointed until the age of 65 on a full-time basis, although they may perform duties on a part-time basis with the President's approval. Members of state industrial tribunals may hold a dual appointment to the Commission. Expert panel members are appointed on a part-time basis for a specified period of not more than five years.

Members come from diverse backgrounds, including the law, unions and employer associations, human resources and corporate management, and the public service. Expert panel members must have knowledge or experience in one or more fields specific to their panel.

Members often share their expertise and engage with the community by participating in a range of presentations, speeches and events in Australia and internationally. For a list of such activities in 2018–19, see Appendix C.

During 2018–19, the following Members were appointed to the Commission: Deputy President Lake, Deputy President Boyce, Deputy President Cross, Deputy President Mansini, Deputy President Young and Commissioner Yilmaz. Commissioner Saunders was promoted to the position of Deputy President.

During 2018–19, Commissioner Cribb retired.

The regional allocation system

On 1 April 2019, a new regional allocation model of allocating and managing cases commenced, replacing the industry panel system. This change reflects the changing nature of the work of the Commission, with a greater proportion of individual-type cases, and enables better oversight of the work of the Commission.

Three regions have been established, with a Regional Coordinator responsible for the management of work undertaken by Members in that region. The regions are:

- Region 1 – New South Wales, Queensland, Northern Territory and Australian Capital Territory
- Region 2 – South Australia and Western Australia
- Region 3 – Victoria and Tasmania.

About the Commission (cont.)

National practice leaders (previously known as panel heads) have been appointed for major case types, to manage the performance of those cases across Australia, and to allocate cases in consultation with the relevant Regional Coordinator.

In most instances, cases are allocated to a Member in the region where the dispute occurs. Where a case requires specialist knowledge the case may be allocated to a Member from outside that region.

For more information on regional allocation, see Appendix B.

General Manager

The Commission's General Manager is Bernadette O'Neill. The General Manager's statutory function is to assist the President in ensuring that the Commission performs its functions and exercises its powers under the Fair Work Act. The General Manager also exercises limited functions and powers concerning federally registered unions and employer organisations under the Registered Organisations Act.

As the accountable authority, the General Manager is responsible for the Commission's performance, financial management and compliance with requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Administrative staff

The General Manager is supported by Commission staff, who are employed under the *Public Service Act 1999* (Public Service Act). Staff are organised into three branches, with the head of each branch, together with the General Manager, forming the Executive.

Client Services handles the majority of enquiries, both by telephone and at offices in each state and territory. Staff receive and process applications, prepare files, coordinate hearing and conference rooms, maintain the case management system, arrange and conduct conciliations and mediations, and publish documents (including decisions and orders).

Corporate Services is responsible for corporate governance and reporting, legal services, financial management and resources, internal communications, human resources and information technology.

Tribunal Services provides research, project management and administrative support to Commission Members. Tribunal Services staff support the work of Members in chambers, undertake specialist workplace relations and economic research, and assist with managing large statutory reviews, such as those concerning modern awards and the minimum wage. In addition, they perform analysis of enterprise agreements, coordinate arbitration hearings for unfair dismissal matters, provide research for individual Members, maintain a workplace relations library and provide support for the Commission's engagement activities. Staff process right of entry permit applications and support the functions of the Tribunal and General Manager under the Registered Organisations Act.

Clients and stakeholders

The Commission's work directly or indirectly affects most of Australia's employees and employers and, as a consequence, the Commission has a diverse group of clients and stakeholders.

In broad terms, the Commission has jurisdiction over a national system that covers:

- all private sector employers and employees in all states and territories except Western Australia (where private sector coverage is limited to constitutional corporations)
- the Commonwealth public sector
- all employers and employees in the territories and in Victoria (with limited exceptions in relation to some state public sector employees)
- some public sector and local government employment in other states.

The Commission's anti-bullying jurisdiction extends to a broader range of workers (in addition to employees) when they are at work in constitutionally-covered businesses.



In focus – Law Week 2019

As a part of Law Week 2019, the Commission hosted three events at the Commission's Melbourne office. The sessions, which were also part of the Commission's Workplace Relations Education Series, were live-streamed around Australia.

The first event – Advocacy before the Commission – was an information session delivered by Deputy President Gostencnik and Commissioner Wilson. This session assisted advocates in learning how to present their case in Commission proceedings and helped improve advocacy skills. The session included tips and insights from the two Members on how to simply and effectively explain the law and facts of a case, expose weaknesses in an opposing party's argument and explain the evidence in context.

The second event was delivered by Commissioners Lee and McKinnon about making compliant agreement applications, given that every application needs to meet the strict requirements of the Fair Work Act. As well as providing information about making an agreement application, the session covered recent amendments to the Fair Work Act and Commission processes.

The third event focused on making and responding to unfair dismissal applications. Delivered by Deputy President Clancy and Commissioner Bissett, the session gave guidance on how to lodge an unfair dismissal application that meets the requirements of the Fair Work Act.

About the Commission (cont.)

Participants also learnt about the requirements that both applicants and respondents need to address as part of the conciliation and arbitration processes. Members discussed the criteria used to decide if a dismissal is unfair, the requirements regarding how reinstatement or compensation is determined, and the sort of information parties need to provide.

The three events received overwhelming support from attendees. They were fully booked within days of opening, and the live streams received a large number of views from around Australia.

Survey feedback about all three events was overwhelmingly positive, with the majority of attendees rating their overall experience as a five out of five. The largest group of attendees at each event were human resources practitioners.

Some notable feedback included:

Advocacy:

'Thought the additional commentary from the Deputy President and Commissioner which deviated from slide content was great. They both provided their views, insights and tips and tricks which was invaluable to hear directly from them. Their presenting style was very engaging.'

'The straight talk from the presenters, telling us exactly how it is and how the Commission works. It's this kind of content that isn't really available anywhere else.'

'Information was very well and succinctly presented in an easy to understand way.'

Agreements:

'The Commissioners were engaging and easy to comprehend.'

'Great first-hand suggestion for effective agreement making and submissions – very 'Content was excellent, and the live stream was easy to access.'

'Hearing directly from Commissioners and their perspective was invaluable.'

Unfair dismissal:

'Gaining an understanding on which areas the Commission gives weight to and the process of an unfair dismissal claim. I also appreciated that the Members highlighted common issues that slow the process down.'

'It was good to see the presentation being delivered by senior people. Very well delivered.'

The live-stream videos are available on the Commission's website at www.fwc.gov.au.

2 Performance

- Performance snapshot
- Delivery of Commission services
- Unfair dismissals
- General protections disputes involving dismissal
- General protections disputes not involving dismissal
- Anti-bullying
- Unlawful termination disputes
- Wages and conditions
- Enterprise agreements
- Industrial action
- Industrial disputes
- New Approaches
- Registered organisations
- Appeals of Commission decisions



Performance snapshot



32 Days

Median time from lodgment to conciliation in unfair dismissal applications



Completed annual wage review

30 May 2019



30 Days

Median time for agreement approval without undertakings

Operational performance



11,702

Hearings and conferences held



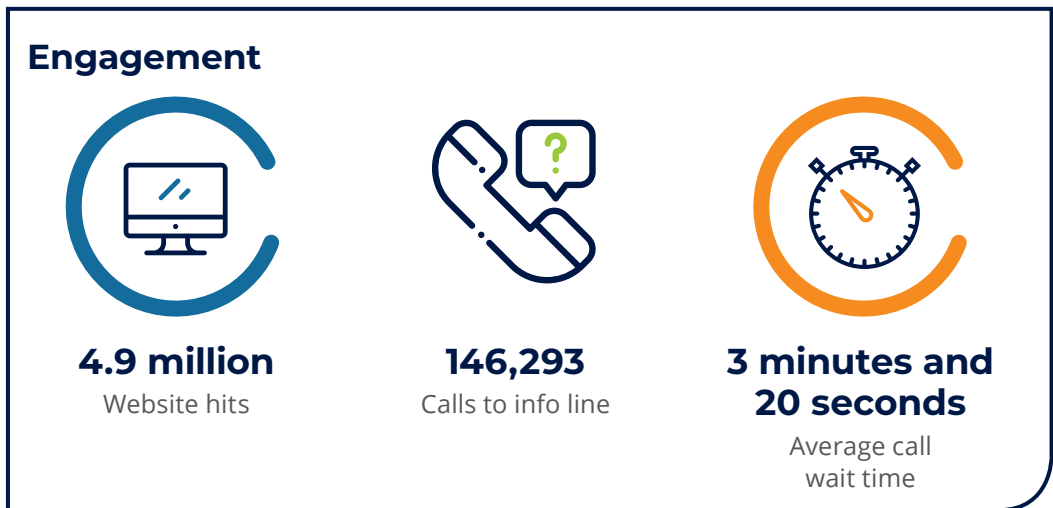
31,415

Applications lodged

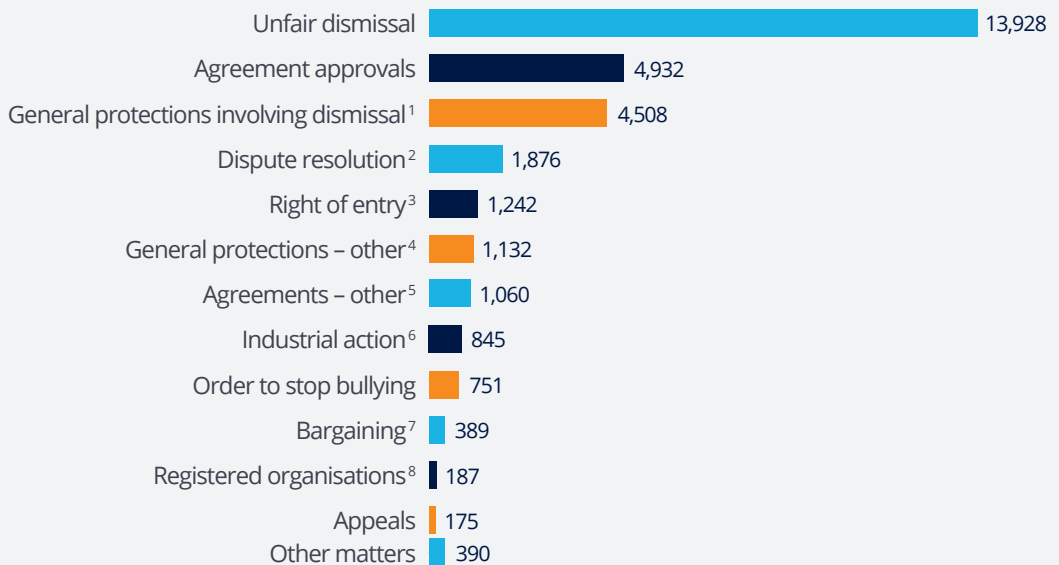


10,974

Decisions and orders published



Types of applications lodged



1 Applications made under s.365 of the *Fair Work Act 2009* (FWA).

2 Applications made under ss.120, 526, 533, 699 and 739 of the FWA.

3 Applications made under s.512 of the FWA.

4 Applications made under ss.372 and 773 of the FWA.

5 Applications to vary and terminate enterprise agreements and transitional individual agreements.

6 Applications made under ss.266, 418, 419, 423, 424, 425, 426, 437, 447, 448, 459 and 472 of the FWA.

7 Applications made under ss.229, 236, 238, 240, 242 and 248 of the FWA.

8 Since the establishment of the Registered Organisations Commission (ROC) on 1 May 2017, most applications previously dealt with by the Commission are now dealt with by the ROC.

Delivery of Commission services

In exercising powers and functions under the Fair Work Act, the Commission provides assistance to a range of parties, including employees and employers and their representatives, federally registered unions, and employer organisations.

The Commission offers a wide range of advice and assistance over the telephone, in person and through correspondence and information materials on its website.

Applications

Tribunal processes commence once a formal application has been lodged with the Commission.

In 2018–19, a total of 31,415 applications were lodged with the Commission, similar to the total of 31,554 applications in 2017–18. Table 1 summarises applications lodged according to matter type from 2015–16 to 2018–19; more detail on lodgments in 2018–19 is in Table D16 in Appendix D.

In 2018–19, unfair dismissal applications were the most common, accounting for 44 per cent of total applications, as in 2017–18. Consistent with previous years, applications for approval of an enterprise agreement were the second most common, making up 16 per cent of total applications. Applications for general protections involving dismissal made up 14 per cent of total applications in 2018–19.

Table 1: Applications lodged, by matter type

Matter type	2018–19	2017–18	2016–17	2015–16
Unfair dismissal	13,928	13,595	14,135	14,694
Agreement approvals	4,932	5,287	5,698	5,529
General protections involving dismissal ¹	4,508	4,117	3,729	3,270
Dispute resolution ²	1,876	1,767	2,106	2,194
Right of entry ³	1,242	1,350	1,521	1,628
General protections – other ⁴	1,132	992	937	940
Agreements – other ⁵	1,060	1,789	1,180	1,335
Industrial action ⁶	845	895	797	1,272
Order to stop bullying	751	721	722	734
Bargaining ⁷	389	349	399	408
Registered organisations ⁸	187	163	1,243	1,472
Appeals	175	190	237	283
Other matters	390	339	367	456
Total	31,415	31,554	33,071	34,215

1 Applications made under s.365 of the *Fair Work Act 2009* (FWA).

2 Applications made under ss.120, 526, 533, 699 and 739 of the FWA.

3 Applications made under s.512 of the FWA.

4 Applications made under ss.372 and 773 of the FWA.

5 Applications to vary and terminate enterprise agreements and transitional individual agreements.

6 Applications made under ss.266, 418, 419, 423, 424, 425, 426, 437, 447, 448, 459 and 472 of the FWA.

7 Applications made under ss.229, 236, 238, 240, 242 and 248 of the FWA.

8 Since the establishment of the Registered Organisations Commission (ROC) on 1 May 2017, most applications previously dealt with by the Commission are now dealt with by the ROC.

Hearings and conferences

In 2018–19, the Commission held 11,702 hearings and conferences around Australia, an increase of 5 per cent compared with a total of 11,196 in 2017–18.

Hearings and conferences are held in each capital city and regional locations. They are held in person, by telephone or by videoconference. Not all matters involve a hearing or conference – some are decided by a Member on the papers.

Members hold hearings and conferences by telephone or videoconference wherever suitable, to reduce parties' travel time and costs and to ensure efficient use of Commission resources. In 2018–19, 30 per cent of all hearings and conferences

Delivery of Commission services (cont.)

conducted by Members were held by telephone or videoconference, compared with 32 per cent in 2017–18. Twenty-five per cent of matters, predominantly applications for approval of enterprise agreements, were decided by a Member on the papers, without the need for a hearing or conference.

In addition, experienced staff conducted 10,408 conciliation conferences during 2018–19, compared with 10,491 in 2017–18. Conciliators hold conferences in relation to applications concerning unfair dismissal, general protections involving dismissal, and anti-bullying. The overwhelming majority of conciliations are conducted by telephone. See Table D15 in Appendix D for detailed information on hearings and conferences.

Decisions and orders

In 2018–19, the Commission issued a total of 10,974 decisions and orders, an increase of 13 per cent from 2017–18, as set out in Table D14 in Appendix D.

Timeliness benchmarks

Our portfolio budget statements set out performance standards for timeliness of staff conciliation conferences in unfair dismissal applications, approval of enterprise agreements, and completion of the annual wage review.

In addition, the Commission has set performance benchmarks concerning delivery of reserved decisions by a single Member, dealing with applications for the approval of enterprise agreements, the hearing of appeals, and handing down reserved decisions in appeal matters.

The benchmarks set a standard to which the Commission aspires, as well as quantifiable measures of performance that provide transparency and accountability.

Figures 2 to 4 compare the Tribunal's performance against benchmarks in 2018–19 with its performance before the introduction of the benchmarks. While performance has improved in most instances since the benchmarks were introduced in 2012, there remains room for further improvement. Improved timeliness performance will be a significant focus in the year ahead.

Figure 2: Timeliness benchmarks – reserved decisions

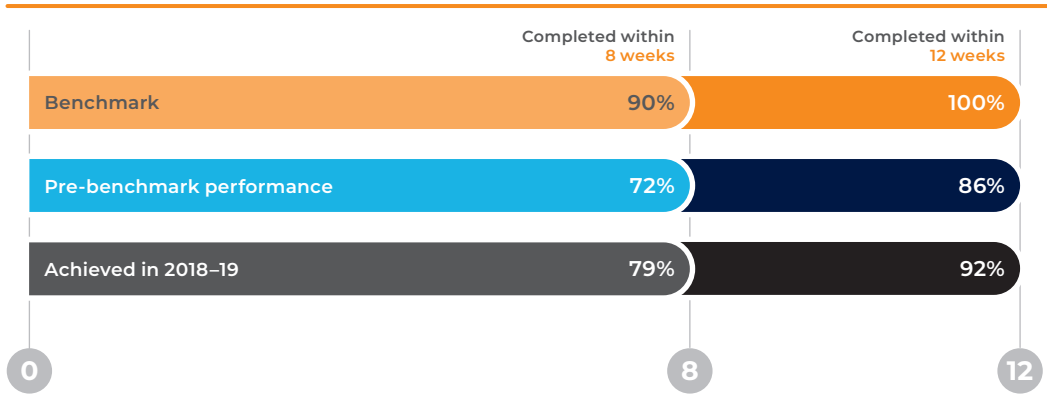


Figure 3: Timeliness benchmarks – appeals

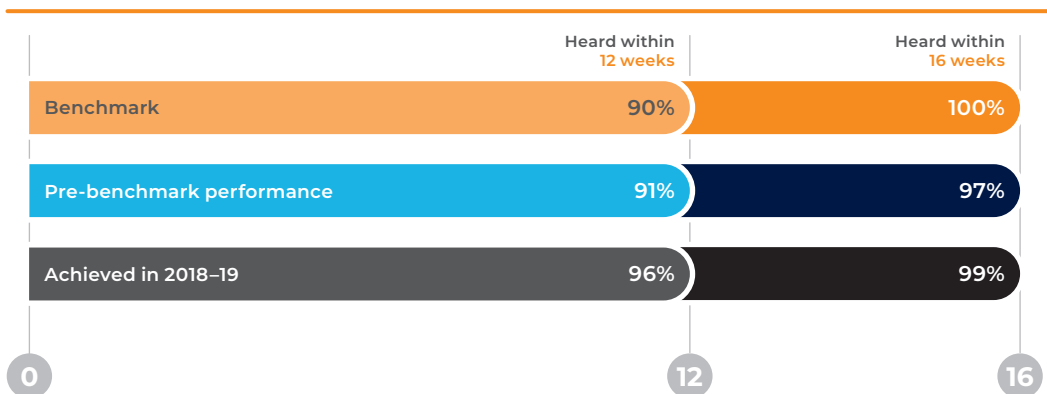
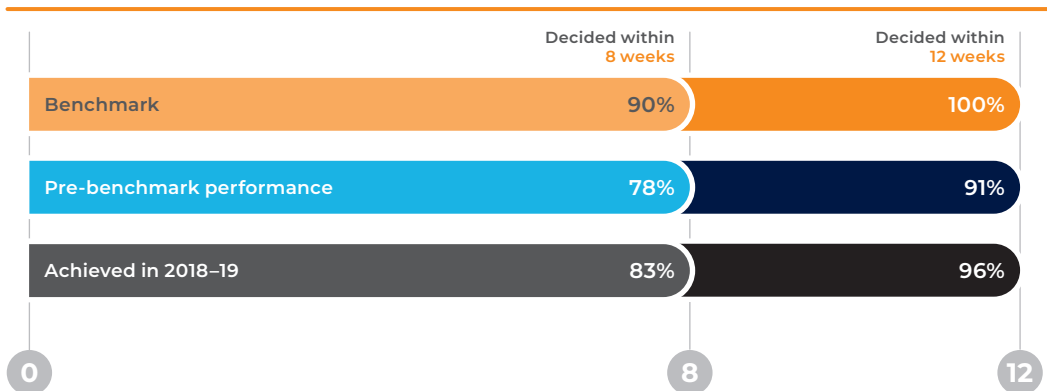


Figure 4: Timeliness benchmarks – reserved decisions in appeals



Unfair dismissals



13,928

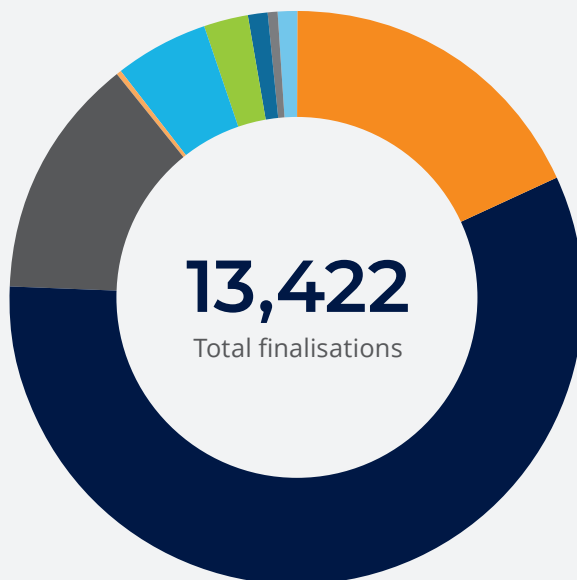
Applications lodged



13,422

Applications finalised

Unfair dismissal – finalisation of matters



- Resolved before conciliation
- Resolved at conciliation
- Resolved after conciliation and before a formal hearing
- Resolved after hearing and before decision
- Finalised by decision
- Finalised by administrative dismissal
- Finalised: jurisdiction objection upheld
- Finalised at arbitration: application dismissed
- Finalised at arbitration: application granted

An employee is unfairly dismissed within the meaning of the Fair Work Act if the dismissal was harsh, unjust or unreasonable; was not a genuine redundancy; and was not consistent with the Small Business Fair Dismissal Code (if the employer is a small business). In order to be eligible to apply, an employee must earn less than the high-income threshold or be covered by an award or enterprise agreement, and must have completed the minimum employment period.

An unfair dismissal application must be lodged within 21 days after the dismissal took effect, although the Commission can grant an extension of time in exceptional circumstances.

The Commission's processes are designed to be quick, flexible and informal. Unfair dismissal applications are usually referred for conciliation by specialist staff conciliators as a first step. With the assistance of a staff conciliator, the employee and employer attempt to resolve the dispute themselves. If a matter cannot be resolved with the assistance of a staff conciliator, it is referred to a Member of the Commission.

In many unfair dismissal cases, the parties are self-represented and the case is their first interaction with the Commission. The Commission's website provides tools to help self-represented parties understand the process and how the Fair Work Act applies to their case, including short videos, a quiz for employees about whether they are eligible to apply. The Commission's benchbook is also an important resource that provides guidance to parties by outlining processes and important decisions.

Performance overview

In 2018–19:

- 13,928 unfair dismissal applications were lodged
- 96 per cent of applications (13,422) were finalised, with 50 per cent finalised within 39 days and 90 per cent within 94 days
- the median number of days to a staff conciliation was 32 days from lodgment, within the portfolio budget statement target of 34 days
- 78 per cent of applications conciliated by staff (8,161) were resolved by the agreement of the parties
- 5 per cent of applications (728) were resolved by the Tribunal, through a final decision or order.

The website received 449,951 page views regarding unfair dismissal, 497,219 page views or downloads of the unfair dismissal benchbook, 28,481 views of the unfair dismissal virtual tour, and 96,885 views of the online eligibility quiz for unfair dismissal applications. Staff answered 17,116 telephone enquiries concerning unfair dismissal.

Unfair dismissals (cont.)**Performance discussion**

In 2018–19, the Commission received 13,928 unfair dismissal applications, as shown in Table 2. While the number of lodgments decreased by 4 per cent between 2015–16 and 2016–17, and again between 2016–17 and 2017–18, there was an increase of 2 per cent in lodgments in the reporting period.

Table 2: Unfair dismissal – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.394 – Application for unfair dismissal remedy	13,928	13,595	14,135	14,694	13,422	13,415	14,587	15,028

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Finalisation of cases

Consistent with results in previous years, a large majority of unfair dismissal applications were finalised without a formal hearing – 19 per cent were either resolved or discontinued before staff conciliation, 61 per cent were resolved at conciliation and 14 per cent were resolved after conciliation and before a formal hearing.

Of the total finalised in 2018–19, only 1 per cent (140) of applications were resolved by a decision of a Member that the dismissal was harsh, unjust or unreasonable. This was consistent with results in previous years.

Five per cent of unfair dismissal matters were finalised by a decision issued by a Member in 2018–19. In those 728 matters, the dismissal was found to be harsh, unjust or unreasonable in 19 per cent of cases (140), compared with 20 per cent in 2017–18.

Table 3 sets out how unfair dismissal matters were finalised in 2018-19.

Table 3: Unfair dismissal – finalisation of matters

Outcome	2018-19	2017-18	2016-17	2015-16
Resolved before conciliation	2,560	2,379	2,425	2,130
Resolved at conciliation	8,161	8,285	8,880	8,529
Resolved after conciliation and before a formal hearing	1,927	1,935	2,218	2,808
Resolved after hearing and before decision	46	37	36	104
Finalised by decision	728	779	1,028	1,457
Finalised by administrative dismissal	353	321	320	362
Finalised: jurisdiction objection upheld	146	195	401	769
Finalised at arbitration: application dismissed	89	104	125	130
Finalised at arbitration: application granted	140	159	182	196
Total finalisations	13,422	13,415	14,587	15,028
Applications granted, as a proportion of total decisions	19%	20%	18%	14%
Applications granted, as a proportion of finalisations	1%	1%	1%	1%



Case study – using plain language to improve user experience in unfair dismissal cases

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

In 2018, as a part of the *What's Next* initiative, the Commission committed to a major review of its correspondence, notices and guidance material. In the review, the Commission responded to findings arising from two 2018 unfair dismissal research reports that examined how employees and small to medium-sized employers experience the Commission's services. One recommendation was that 'Using plain English in correspondence, forms and other communication tools could improve users' experience of the overall process.'¹



Case study – using plain language to improve user experience in unfair dismissal cases (cont.)

The Commission started by reviewing 87 unfair dismissal template letters and notices that are sent from our case management system in a range of common scenarios. This is the first time this correspondence has been systematically reviewed since the Fair Work Act commenced.

Initial samples of the most commonly sent letters were redesigned with a plain language expert and then refined by a group of Members and staff who regularly handle unfair dismissal cases. Having created drafting principles, Commission staff drafted all remaining letters.

The Commission published a sample of commonly used letters on its website for public consultation in May. We also sent samples to key industry stakeholders, seeking feedback from the perspective of employees and small to medium employers, as well as seeking comment from both employees and employers who have previously participated in unfair dismissal cases.

Initial feedback has been positive. Insights from user testing and consultation will inform further revisions to the draft letters before they are finalised. We will start using the revised letters when we launch unfair dismissal matters in our new case management system later in 2019.

After we have implemented the revised unfair dismissal letters, the Commission will review unfair dismissal information resources on its website including guides, practice notes and benchbooks. We will also review letters and notices for other individual application types including general protections, anti-bullying and unlawful dismissal. The review will mean that all information available in individual application types is clear, accurate and consistent.

The Commission will also work with its staff in client-facing roles to improve their plain language capabilities.

1 Final report: Unfair dismissal user-experience research, Cube Group, March 2018, p.4.

Staff conciliation outcomes

Conciliation outcomes are agreed by the parties with the assistance of the Commission's specialist staff conciliators, who facilitate conferences with the parties soon after lodgment of an application. The conferences are usually held by telephone to reduce the need for parties and conciliators to spend time and money on travel.

Conciliation is a highly effective process. In 2018-19, a conciliation conference was held in 10,408 matters. The parties resolved the matter by agreement in 78 per cent of cases.

Unfair dismissals (cont.)

As well as resolving their unfair dismissal application, the parties regularly seek to resolve other monetary or non-monetary issues – such as payment of outstanding entitlements or provision of references – through conciliation. While the parties themselves resolve the matters, staff conciliators can assist with drafting terms of settlement.

Table D1 in Appendix D provides a breakdown of the outcomes of matters resolved at staff conciliation as reported to the Commission. In 2018–19, 63 per cent (5,137) of conciliation resolutions involved both monetary and non-monetary items; 18 per cent (1,500) were resolved on a purely non-monetary basis; and less than 1 per cent (55 conciliations) resulted in an employee being reinstated.

Table D2 in Appendix D provides details of monetary amounts (including, but not limited to, compensation) agreed by the parties as part of the terms of settlement. In a substantial majority of matters – 84 per cent (5,543) – the payments were for less than \$10,000.

Table D3 in Appendix D provides information regarding the size of employers who participated in conciliation conferences in unfair dismissal matters, based on the information provided by employers.

Matters finalised by Members

If an application is not resolved through conciliation or withdrawn, it is dealt with by a Member. The Member considers any jurisdictional objections that were not dealt with earlier in the process, any other bases for dismissing the application, and the merits of the application.

Consideration of objections by the employer

If an employer believes that the Commission does not have the power under the Fair Work Act to deal with the employee's claim, the employer can object to the application.

In 2018–19, the Commission heard 207 matters in which one or more objections were raised by the employer. Of those matters, 71 per cent (146) were upheld in favour of the employer, resulting in the application being dismissed (as shown in Table D4 in Appendix D).

The most common successful objections related to the timeliness of the employee's application, the duration of the employee's period of employment, and whether the employee had been dismissed.

Of the 61 matters in which the Commission did not uphold the employer's objection(s), the Commission granted the employee an extension of time to lodge the application in 30 per cent of cases (18 matters).



In focus – using behavioural insights to increase on time lodgment

The Commission is using behavioural insights (BI) to improve the timeliness of unfair dismissal applications. As a part of *What's Next* the Commission launched its first BI project in partnership with experts from the Behavioural Insights Team. The project focused on identifying behavioural interventions aimed at increasing the in time lodgment of unfair dismissal applications. Recommendations focused on improving awareness of the implications of lodging an out of time application so that applicants can make earlier, informed decisions on their best course of action. One recommendation targeting scarcity bias and loss aversion was to provide applicants with a date calculator similar to the existing agreements calculator. Using a countdown would highlight to applicants that their opportunity to apply is 'scarce', and that they might 'miss out' if they don't act soon.



Significant decision – is a Foodora delivery rider an employee?

The Commission found that a Foodora delivery rider was an employee and not an independent contractor. The rider was not carrying on a trade or business of his own but was working in Foodora's business, as part of that business.

The Commission found the rider was dismissed without a valid reason and that the dismissal involved an entirely unjust and unreasonable process as Foodora did not give the rider an opportunity to be heard. The Commission ordered Foodora, now in administration, to pay the rider \$15,559 within 21 days.

You can read the decision in *Klooger v Foodora Australia Pty Ltd* at [2018] FWC 6836.

Dismissal on other grounds

The Commission can dismiss unfair dismissal applications on other grounds not raised by the employer as an objection. Under s.587 of the Fair Work Act, an application can be dismissed if it was not made in accordance with the Fair Work Act, is frivolous or vexatious, or has no reasonable prospect of success. Under s.399A of the Fair Work Act, an application can be dismissed for failure to attend a conference or hearing, failure to comply with a direction or order, or failure to discontinue an application after settlement.

Where it is clear on the face of an application that the applicant has not served the minimum employment period required to make an unfair dismissal claim, the matter is referred to the Member for determination.

Unfair dismissals (cont.)

In 2018–19, the Commission dismissed a total of 353 unfair dismissal applications for one or more reasons not related to objections made by the employer, as shown in Table D5 in Appendix D. Of the 95 matters that were dismissed by a panel head under s.587 of the Fair Work Act, in 43 per cent of cases (41 matters) the employee had not met the minimum employment period, and in 59 per cent of cases (56 matters) the application was incomplete or the applicant had not paid a filing fee or been granted a fee waiver.

Consideration of the merits of an application

A decision about the merits of an unfair dismissal application concerns whether the dismissal was 'harsh, unjust or unreasonable' as defined in the Fair Work Act.

As shown in Table D6 in Appendix D, Members made 229 decisions in 2018–19 about the merits of applications, which represented 2 per cent of all finalised unfair dismissal cases. In 39 per cent (89) of those decisions, the Member dismissed the application, determining that the dismissal had been fair.

In the remaining 61 per cent (140) of the applications that were considered on their merits, Members granted remedies for unfair dismissal in the large majority of cases. The remedies were:

- monetary outcomes, in 69 per cent of cases (96 applications)
- reinstatement plus compensation for lost remuneration, in 6 per cent of cases (nine applications)
- reinstatement without compensation for lost remuneration, in 3 per cent of cases (four applications).

The median amount awarded as compensation in 2018–19 was \$8,704, which is the equivalent of eight weeks pay, as shown in Table D8 in Appendix D.

A remedy was not granted in 8 per cent of decisions (11 applications) and was yet to be determined at the end of 2018–19 in 14 per cent of decisions (20 applications).

Details of the decisions and remedies granted in 2018–19 are shown in Tables D6 to D9 in Appendix D.



Significant decision – can a labour hire company dismiss a worker at a client's request?

Labour hire firm WorkPac dismissed a casual mine worker after WorkPac was directed by its client, BHP Billiton Mitsubishi Alliance (BMA), to remove her from the work site. The employee was not told why she was being removed from the site and understood from a conversation with WorkPac that she had been dismissed.

The Commission found that, although the employee was not told of the reason for her dismissal, it most likely related to her conduct during a shift a few days earlier. When determining whether there was a valid reason for WorkPac to dismiss the employee, the Commission found that WorkPac failed to ask BMA for any reasons. The Commission found there was no valid reason for dismissing the mine worker and that WorkPac failed to consider an alternative assignment for her before terminating her employment. The Commission said that the failure of WorkPac's managers to seek further information from BMA about the reason for dismissal was contrary to the usual procedure and to contractual provisions which gave WorkPac some rights to debate a direction from BMA to remove an employee from site.

The Commission found the dismissal to be unfair and left it for the parties to consider their positions on reinstatement. On 22 October 2018, the Federal Court issued an interlocutory decision restraining BMA from stopping the employee from returning to the work site. In response, the Commission ordered reinstatement for the employee to her position with continuity of service from the date of her dismissal.

You can read the Commission decision in *Star v WorkPac Pty Ltd* at [2018] FWC 4991 and the Federal Court decision at [2018] FCA 1590 and the Commission order at [PR701622].

Unfair dismissals (cont.)**Timeliness**

As shown in Table 4, despite the 2 per cent increase in claims lodged over the period, the Commission met its portfolio budget statements key performance indicator for timeliness in 2018–19: a median of 34 days from lodgment of an unfair dismissal application to a staff conciliation conference. The median in 2018–19 was 32 days.

In 2018–19, unfair dismissal applications were finalised in a median of 39 days, with 90 per cent of matters finalised within 94 days of lodgment.

Table 4: Unfair dismissal – timeliness

Process	Days elapsed							
	In 50% of matters				In 90% of matters			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.394 – Unfair dismissal – lodgment to conciliation	32	27	34	34	46	37	44	54
FWA s.394 – Unfair dismissal – lodgment to finalisation	39	31	37	42	94	90	102	123

FWA = Fair Work Act



In focus – engaging with small business

In 2018-19 the Commission established the Small Business Reference Group (SBRG). A *What's Next* initiative, the SBRG is a forum for small businesses and their representatives to provide feedback on Commission initiatives and assist the Commission in continuing to improve its services.

The Commission initiated research in 2017 to identify practical measures to improve the services we provide to small businesses. One of the recommendations arising from the research was to establish ongoing consultation channels with small business, leading to the establishment of the SBRG.

The role of the SBRG is to:

- enable information sharing between small businesses and their representatives and Commission
- assist the Commission in its ongoing work to ensure the information it provides to the public is accessible, accurate and consistent, particularly for small business users
- assist the Commission to identify, develop and implement initiatives to improve its services, particularly for small businesses
- support the Commission in its engagement with small business users including identifying and facilitating opportunities for the Commission to engage with small businesses.

Membership of the SBRG is made up of peak bodies that represent small business, small business operator members of peak bodies and government bodies such as the Fair Work Ombudsman and the Australian Small Business and Family Enterprise Ombudsman.

The SBRG provides a valuable resource to test initiatives aimed at improving the experience for users of the Commission. For example, SBRG members provided feedback on the unfair dismissal documentation redrafted in plain language from the perspective of small business employers. Read more about our project to redraft unfair dismissal correspondence using plain language on page 29.

General protections disputes involving dismissal



4,508

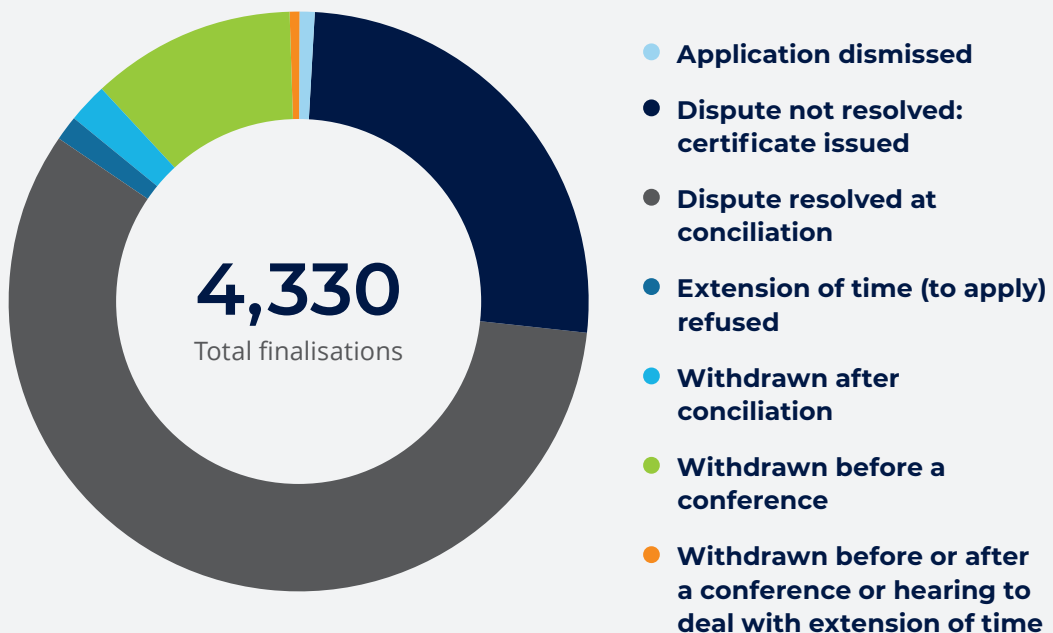
Applications lodged



4,330

Applications finalised

General protections disputes involving dismissal – finalisation of matters



The general protections provisions under Part 3–1 of the Fair Work Act aim to protect workplace rights and freedom of association and to protect people from discrimination within the workplace.

An employee who believes that their employment has been terminated in breach of the provisions may, within 21 days of their dismissal taking effect, apply to the Commission under s.365 of the Fair Work Act.

The Commission is required to assist parties to resolve general protections disputes by conducting private conferences involving mediation or conciliation. In an approach similar to the process for unfair dismissal matters, when a general protections application involving dismissal is lodged, specialist staff conciliators work with the parties to try to reach agreement between the parties to resolve the dispute.

Staff conciliators conduct conferences under delegation from the President. The use of staff conciliators allows the Commission to assist parties to resolve their disputes without the need for costly court proceedings, while freeing up Members to undertake more complex work.

A Member must issue a certificate if all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

If the matter is not resolved at the Commission, the applicant may apply to either the Federal Court of Australia or the Federal Circuit Court of Australia to have the dispute determined. The Commission is obliged to advise the parties if it believes that such a court application would not have a reasonable prospect of success.

As an alternative, where the matter is not settled at conference and all parties consent, the Commission can determine the matter by issuing a decision that is binding on the parties (consent arbitration).

Performance overview

In 2018–19:

- 4,508 general protections applications involving dismissal were lodged
- 4,330 applications were finalised, of which 26 per cent were finalised with a certificate being issued
- 14 applications were made for consent arbitration, following a certificate being issued.

The website received 77,003 page views regarding general protections disputes, 186,416 page views or downloads of the general protections benchbook, and 41,835 visits to the online eligibility quiz page for general protections.



Performance discussion

The number of general protections applications involving dismissal increased by 9 per cent, to 4,508 in 2018–19 from 4,117 in 2017–18, as shown in Table 5. This followed a 10 per cent increase in 2017–18.

The total number of matters finalised in 2018–19 was similar to the previous reporting period, with 28 fewer applications finalised than in 2017–18. This follows a 22 per cent increase in finalisations in 2017–18 and a 16 per cent increase in 2016–17.

The proportion of matters finalised by a Member issuing a certificate stating that all reasonable attempts to resolve the dispute had been, or were likely to be, unsuccessful remained stable at 26 per cent of cases, compared with 27 per cent in 2017–18. The remaining 74 per cent of cases finalised in 2018–19 were resolved through Commission processes.

A total of 2,502 matters were resolved at or after a conciliation conference, representing 58 per cent of all cases finalised, as shown in Table 6.

Of the 3,630 cases dealt with by the Commission in conference in 2018–19, the dispute was resolved in 69 per cent of cases, as shown in Table 7. This is consistent with 2017–18, when 68 per cent of matters were resolved in conference.

For applications resolved at conciliation in 2018–19, outcomes included:

- monetary payments and non-monetary items, in 50 per cent of cases (1,240 applications)
- monetary payments only, in 26 per cent (639)
- non-monetary items only, in 18 per cent (462).

In the remaining matters, the outcome was not disclosed to the Commission.

Where parties resolve a matter through conciliation, the terms of settlement can include other matters (such as payment of outstanding entitlements) in addition to any compensation paid in relation to the dismissal. Figures for monetary payment in Table D10 in Appendix D can include payments that do not arise under the Fair Work Act.

As in previous years, in 2018–19 only a very small number of parties to general protections disputes involving dismissal consented to the Commission deciding the matter by issuing a binding decision in consent arbitration. Of the 1,128 cases where the Commission issued a certificate stating that attempts to resolve the dispute had been, or were likely to be, unsuccessful, the parties agreed to consent arbitration in only 14 matters (1 per cent), as shown in Table D11 in Appendix D. This is consistent with results for 2017–18, when parties in 18 matters (2 per cent of a total of 1,164) agreed to consent arbitration.

General protections disputes involving dismissal (cont.)

Table 5: General protections disputes involving dismissal – applications lodged and finalised

Matter type	No. lodged				No. finalised				Manner finalised	No. of matters			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16		2018-19	2017-18	2016-17	2015-16
FWA s.365 – General protections disputes involving dismissal									Certificate issued	1,128	1,164	905	755
	4,508	4,117	3,729	3,270	4,330	4,358	3,564	3,060	Without certificate issued	3,202	3,194	2,659	2,305

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Table 6: General protections disputes involving dismissal – finalisation of matters

Outcome	No. of matters				Percentage of matters			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
Application dismissed	38	24	15	29	<1	<1	<1	<1
Dispute not resolved: certificate issued	1,128	1,164	905	755	26	27	25	25
Dispute resolved at conciliation	2,502	2,524	2,012	1,631	58	58	56	53
Extension of time (to apply) refused	60	60	98	99	1	1	3	3
Withdrawn after conciliation	96	72	71	83	2	2	2	3
Withdrawn before a conference	487	493	433	454	11	11	12	15
Withdrawn before or after a conference or hearing to deal with extension of time	19	21	30	9	<1	<1	1	<1
Total	4,330	4,358	3,564	3,060	100	100	100	100

Table 7: General protections disputes involving dismissal – conciliation outcomes

Outcome	No. of matters			
	2018-19	2017-18	2016-17	2015-16
Matters settled	2,502	2,524	2,012	1,631
Dispute resolved: monetary	639	721	646	576
Dispute resolved: monetary and non-monetary items	1,240	1,185	894	614
Dispute resolved: non-monetary items only	462	546	430	344
Dispute resolved: details unknown	161	72	42	97
Matters not settled	1,128	1,164	905	755
Total	3,630	3,688	2,917	2,386



Case study – improving user experience through enhanced case management

Originating as part of the President’s *What’s Next* initiative, enhanced case management (ECM) began in 2018, with the original focus of improving engagement with small businesses responding to unfair dismissal and general protections cases. Where possible, a team member contacted small businesses prior to listing applications for telephone conciliation or a staff conference.

The Commission trialled different approaches to case management for unfair dismissal and general protection matters in late 2018 and early 2019. Primarily, case managers sought to explain the Commission’s processes to respondents that had been identified as representing a small business before sending out any material. The goal was to help them to develop a better understanding of the system and the Commission’s processes, to enable them to actively engage in, and build trust in, the process. In part, this is an acknowledgment that many employers may have little or no experience with unfair dismissal and general protections matters, and this is potentially most true for the small business community.

In February and March 2019, the Commission broadened ECM’s focus to include some self-represented applicants in unfair dismissal and general protections matters.

General protections disputes involving dismissal (cont.)**Timeliness**

The median time from lodgment of a general protections application involving dismissal to a conciliation conference was 35 days in 2018–19, as shown in Table 8. This is an improvement of 13 per cent from a median of 40 days in 2017–18 and follows an improvement of 31 per cent in performance from 2016–17 (58 days) to 2017–18. This largely reflects the realignment of resourcing of both the administrative support function and specialist staff conciliators.

There was an improvement of 10 per cent in the timeliness of the finalisation of general protections disputes involving dismissal, with cases finalised in a median of 43 days in 2018–19, compared with a median of 48 days in 2017–18.

Table 8: General protections disputes involving dismissal – timeliness

Process	Days elapsed							
	In 50% of matters				In 90% of matters			
		2017–18	2016–17	2015–16	2018–19	2017–18	2016–17	2015–16
FWA s.365 – General protections disputes involving dismissal – lodgment to conciliation	35	40	58	45	52	61	75	68
FWA s.365 – General protections disputes involving dismissal – lodgment to finalisation	43	48	62	50	87	97	103	103

FWA = Fair Work Act

General protections disputes not involving dismissal

The provisions under Part 3–1 of the Fair Work Act to protect workplace rights and freedom of association and to protect people from workplace discrimination apply to ‘adverse action’ other than dismissal.

An employee who believes that they have been subjected to adverse action for a prohibited reason may make a general protections application to the Commission under s.372 of the Fair Work Act. Applications are made under s.372 where there is an ongoing employment relationship.

The Commission must conduct a conference with the employer and employee to attempt to resolve the dispute, but only if they both agree to participate. Conciliation conferences are conducted by Commission Members.

If a general protections dispute not involving dismissal is not resolved by the Commission, the applicant may apply to either the Federal Court of Australia or the Federal Circuit Court of Australia to have the dispute determined. The Commission must advise the parties if it believes that such a court application would not have a reasonable prospect of success.

Performance overview

In 2018–19:

- 1,005 general protections applications not involving dismissal were lodged
- 890 applications were finalised, of which 31 per cent were resolved through conciliation.

Performance discussion

The number of general protections applications not involving dismissal increased by 11 per cent, to 1,005 in 2018–19 from 902 in 2017–18. The total number of applications lodged in 2018–19 is the highest since 2015–16, as shown in Table 9.

Of the 890 applications that were finalised in 2018–19, 27 per cent were withdrawn or were invalidly made, as shown in Table 10. In a further 12 per cent of cases, the employer did not agree to participate in a Commission conference.

Of the remaining 540 matters, which were dealt with by a Member in conference, the dispute was resolved through Commission procedures in 52 per cent (279) of cases. This is less than in 2017–18, when 60 per cent of matters (336) that were dealt with by a Member in conference were resolved.

General protections disputes not involving dismissal (cont.)**Table 9: General protections disputes not involving dismissal – applications lodged and finalised**

Matter type	No. lodged				No. finalised			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.372 – General protections disputes not involving dismissal	1,005	902	828	859	890	857	787	842

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Table 10: General protections disputes not involving dismissal – finalisation of matters

Outcome	No. of matters				Percentage of matters			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
Application withdrawn	238	196	191	221	27	23	24	26
Invalid application	4	4	3	8	<1	<1	<1	1
Employer declined to participate in a conference	108	93	68	73	12	11	9	9
Finalised by a Member – dispute not resolved	261	228	213	231	29	27	27	27
Finalised by a Member – dispute resolved	279	336	312	309	31	39	40	37
Total	890	857	787	842	100	100	100	100

Timeliness

In 2018-19, the median time elapsed from lodgment of an application to the first conference with the employer and employee in general protections disputes not involving dismissal was 29 days, with 90 per cent of first conferences held within 61 days. This was a decrease in performance from the previous reporting period, as shown in Table 11.

General protections disputes not involving dismissal were finalised (including by being withdrawn or the employer declining to participate in a conference) in a median of 34 days from lodgment in 2018-19, four days longer than in 2017-18. It took one day less for 90 per cent of matters to be finalised in 2018-19 than in 2017-18.

Table 11: General protections disputes not involving dismissal – timeliness

Process	Days elapsed							
	In 50% of matters				In 90% of matters			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.372 – General protections disputes not involving dismissal – lodgment to first conference	29	26	23	27	61	50	48	54
FWA s.372 – General protections disputes not involving dismissal – lodgment to finalisation	34	30	29	34	107	108	94	107

FWA = Fair Work Act



In focus – improving access to legal services

‘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.’

Sir Andrew Legatt, *Tribunals for Users – One System, One Service, Report of the Review of Tribunals* (2001)

One of the key initiatives in *What’s Next* is to increase access to legal advice by employees and employers who are unfamiliar with the Commission and the Fair Work Act.

The Workplace Advice Service provides unrepresented individuals and small business employers with up to one hour of free legal advice and assistance in relation to dismissal, general protections and workplace bullying issues or enquiries. Assistance may be available during a matter and prior to lodgment of an application.

Officially commencing in Victoria and New South Wales on 1 August 2018, the service expanded to Western Australia on 1 November 2018 and to South Australia and Queensland on 1 February 2019. We are in the preliminary planning stages for further expansion of the service to cover all capital cities and some regional locations.

General protections disputes not involving dismissal (cont.)

The Commission has developed partnerships with approximately 65 organisations, including community legal centres, legal aid bodies, law firms and legal practitioners across Australia. Without these partnerships, and the assistance they provide, the service could not exist.

During 2018–19, approximately 1,081 consultations took place across five states. We regularly receive feedback demonstrating the positive impact of legal advice, support and guidance during what can be a challenging experience, particularly for those who are unrepresented:

‘Irrespective of the level of success with my matter, I am grateful to have been able to resolve it with the Fair Work Commission’s involvement. The experience has restored my confidence in external bodies like yours being proven to be successful in helping give people a voice and opportunity to pursue their rights.’

Workplace Advice Service Client, Victoria

‘To seek legal assistance at this specialist level, is way out of anything that I would be able to afford, and to be provided such a service in an efficient, timely and supportive manner is nothing short of outstanding.

The information I received ... was thorough and helped me devise a strategy moving forward that would do the best to protect both my income and my mental health. It certainly provided great relief for what has been a very stressful situation, though I understand I have some way to go – at least now I have an informed plan.

I just wanted to send you a note of appreciation for the difference Fair Work and your team have been able to make to my life. I am truly grateful.

Thank you.’

Workplace Advice Service Client, New South Wales

The recent funding announcement of \$1.4 million over four years will help the Commission achieve its goal of expanding the service nationally.

Anti-bullying



751

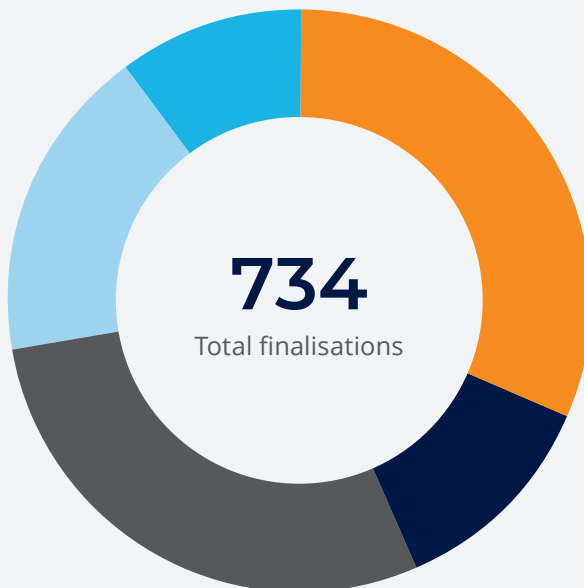
Applications lodged



734

Applications finalised

Anti-bullying – finalisation of matters



- Applications withdrawn early in case management process¹
- Applications withdrawn before proceedings²
- Applications resolved during the course of proceedings³
- Matters withdrawn after a conference or hearing and before decision
- Applications finalised by decision

1 Applications withdrawn before substantive proceedings – while the matter is with the case management team or practice leader.

2 Includes matters that are withdrawn before a proceeding being listed; before a listed conference, hearing, mention or mediation before a Commission Member is conducted; and before a listed mediation by a staff member is conducted. This also includes matters where an applicant considers the response provided by the other parties to satisfactorily deal with the application.

3 Includes matters that are resolved as a result of a listed conference, hearing, mention or mediation before a Commission Member or listed mediation by a staff member.

Anti-bullying (cont.)

The anti-bullying jurisdiction allows a worker who believes that they (or a group that they belong to) has experienced repeated unreasonable behaviours at work to apply for an order to stop those behaviours. Reasonable management action carried out in a reasonable manner is excluded from the definition of bullying.

In order to apply, the behaviour must take place while the worker is at work in a 'constitutionally-covered business', as defined in s.789FD of the Fair Work Act.

To make an order to stop bullying, the Commission must be satisfied that the behaviours have created a risk to the applicant worker's health and safety, and that there is a risk that the behaviours will continue.

The Commission focuses on resolving the matter and enabling mutually safe and productive working relationships to resume. The majority of matters are resolved without the need to make an order. Matters can be resolved in various ways, including through the employer's recognition of, and response to, a workplace complaint and the agreed implementation of workplace solutions such as providing training or adjusting lines of reporting.

The case management process adopted by the Commission is designed to facilitate the informed, safe and constructive engagement of all parties. The Commission seeks to initially progress appropriate matters through early preliminary conferences to establish an appropriate basis for the parties' conduct while the substantive application is being considered.

If a finding is made, a Member may make any order they consider appropriate to prevent the behaviours continuing. However, the Commission cannot order reinstatement, compensation or a monetary amount.

Performance overview

In 2018–19:

- 751 applications for an order to stop bullying were lodged
- 734 applications were finalised, of which 10 per cent (74) were resolved by the Commission issuing a decision or order.

The website received 183,279 page views regarding anti-bullying, 103,818 page views or downloads of the anti-bullying benchbook, 21,005 views of the anti-bullying virtual tour, and 59,198 page views of the online eligibility for anti-bullying applications. Staff answered 5,550 telephone enquiries concerning anti-bullying.

Performance discussion

The number of applications for an order to stop bullying has been fairly consistent since the jurisdiction commenced on 1 January 2014, with a 4 per cent increase in applications in 2018–19, as shown in Table 12.

Table 12: Anti-bullying – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018–19	2017–18	2016–17	2015–16	2018–19	2017–18	2016–17	2015–16
FWA s.789FC – Anti-bullying	751	721	722	734	734	700	695	705

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

A total of 734 applications for an order to stop bullying were finalised in 2018–19. Table 13 sets out how matters were finalised during the year. Consistent with results in previous years, a large majority (90 per cent) of applications were finalised without a decision or order. This is a product of the relatively high rates of settlement and withdrawal of applications, including where appropriate arrangements are made in the workplace without a formal agreed resolution.

Table 13: Anti-bullying – finalisation of matters

Outcome	2018–19	2017–18	2016–17	2015–16
Applications withdrawn early in case management process ¹	232	183	171	237
Applications withdrawn before proceedings ²	87	97	125	115
Applications resolved during the course of proceedings ³	212	234	188	191
Matters withdrawn after a conference or hearing and before decision	129	133	151	110
Applications finalised by decision	74	53	60	52
Total	734	700	695	705

1 Applications withdrawn before substantive proceedings – while the matter is with the case management team or practice leader.

2 Includes matters that are withdrawn before a proceeding being listed; before a listed conference, hearing, mention or mediation before a Commission Member is conducted; and before a listed mediation by a staff member is conducted. This also includes matters where an applicant considers the response provided by the other parties to satisfactorily deal with the application.

3 Includes matters that are resolved as a result of a listed conference, hearing, mention or mediation before a Commission Member or listed mediation by a staff member.

Table D12 in Appendix D provides a breakdown of how the Commission resolved the 74 applications that were finalised by decision in 2018–19. An order to stop bullying was made in two substantive applications, which represents less than 1 per cent of the finalised cases, a decrease compared with results in previous years.

Anti-bullying (cont.)**Timeliness**

The Fair Work Act requires the Commission to start dealing with an application for an order to stop bullying within 14 days of lodgment. Similar to the approach to general protections applications not involving dismissal, this legislative timeframe recognises that relationships at work are ongoing while the Commission is dealing with the application.

In 2018–19, the Commission maintained its high level of performance, with a median of one day taken to begin dealing with an application, as shown in Table 14. The Commission started dealing with every application within 13 days in 2018–19, an increase of eight days from 2017–18. This is a one-off increase arising from a small backlog of applications while we were migrating all cases between case management systems.

Table 14: Anti-bullying – timeliness

Process	Days elapsed							
	In 50% of matters				In 100% of matters			
	2018–19	2017–18	2016–17	2015–16	2018–19	2017–18	2016–17	2015–16
FWA s.789FC – Anti-bullying – time to start dealing with an application	1	1	1	1	13	5	6	5

FWA = Fair Work Act

**Significant decision – is a volunteer a ‘worker’?**

Under the Fair Work Act, an application for an order to stop bullying can only be made by a worker. The Commission’s original decision was that a mental health clubhouse member could not apply for orders to stop bullying because he was participating in a government-funded program to improve his wellbeing and was therefore not a worker.

He claimed that he needed orders to stop bullying under the Fair Work Act to ensure his safe return to his voluntary activities at the club.

A Full Bench quashed the original decision, noting that the clubhouse member performed his work ‘side by side with staff’ and that the day program was intentionally understaffed so that it could not operate without the assistance and involvement of the membership.

As the Full Bench decided that the clubhouse member was a worker, he was then able to make an application for orders to stop bullying.

You can read the decision in *Bibawi v Stepping Stone Clubhouse Inc T/A Stepping Stone & Others* at [2019] FWCFB 1314.

Unlawful termination disputes



127

Applications lodged



125

Applications finalised

Unlawful termination disputes – finalisation of matters



4 Days

Unlawful termination cases were finalised in a median of four days from lodgment.



An employee who falls outside the coverage of the Fair Work Act's general protections provisions (Part 3–1) may be eligible to lodge an unlawful termination application under Part 6–4 of the Fair Work Act.

The broad application of the general protections provisions means that not many applications rely on the unlawful termination provisions, which apply mainly to non-national system employees. This is reflected in the considerably lower number of unlawful termination applications made to the Commission each year, compared with general protections dispute applications (both involving and not involving dismissal).

The processes in the Fair Work Act for dealing with unlawful termination applications are broadly similar to those for general protections disputes. An application must be lodged within 21 days after the applicant's employment was terminated.

The Commission must attempt to resolve the dispute through private conference and, if unsuccessful, must issue a certificate stating that it is satisfied that all reasonable attempts at resolution have been, or are likely to be, unsuccessful.

The parties can consent to the Commission making a binding decision through consent arbitration. If the parties do not agree to arbitration, the employee can make an application to the Federal Court of Australia or Federal Circuit Court of Australia to deal with the matter. The Commission must advise the parties if there is no reasonable prospect of successfully resolving the dispute either during consent arbitration before the Commission or through a court application.

Performance overview

In 2018–19:

- 127 unlawful termination applications were lodged
- 125 applications were finalised, of which 122 (98 per cent) were resolved by the Commission's conference process without a certificate being issued.

Performance discussion

The number of unlawful termination applications increased by 41 per cent, to 127 in 2018–19 up from 90 in 2017–18. As shown in Table 15, this is the largest number of applications lodged over the past four years.

The Commission finalised 125 unlawful termination applications in 2018–19. In only 2 per cent of cases, the Commission issued a certificate stating that it was satisfied that all reasonable attempts to resolve the dispute (other than by consent arbitration) had been, or were likely to be, unsuccessful. This is fewer than previous years; a certificate was issued in 14 per cent of cases in 2017–18 and in 12 per cent of cases in 2016–17.

Unlawful termination disputes (cont.)**Table 15: Unlawful termination disputes – applications lodged and finalised**

Matter type	No. lodged				No. finalised				Manner finalised	No. of matters			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16		2018-19	2017-18	2016-17	2015-16
FWA s.773 – Unlawful termination	127	90	109	81	125	88	111	82	Certificate issued	3	11	12	10
									Without certificate issued	122	77	99	72

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Timeliness

In 2018–19, the Commission held its first conference in a median of 15 days from lodgment, an improvement from 22 days in 2017–18. The median time elapsed from lodgment to first conference has improved significantly over the past four reporting periods, as shown in Table 16.

Showing similar improvement, the Commission held its first conference within 42 days in 90 per cent of matters in 2018–19, 2 days earlier than in 2017–18 and 13 days earlier than in 2016–17.

The majority of unlawful termination applications are withdrawn by the employee – of the 125 cases finalised in 2018–19, 80 per cent were withdrawn. As a result, the median number of days taken for the Commission to finalise a case is lower than the median number of days from lodgment to first conciliation, as shown in Table 16.

In 2018–19, unlawful termination cases were finalised in a median of four days from lodgment. This was five days earlier than in 2018–19 and a significant improvement on earlier reporting periods.

Table 16: Unlawful termination disputes – timeliness

Process	Days elapsed							
	In 50% of matters				In 90% of matters			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.773 – Unlawful termination – lodgment to first conference	15	22	24	30	42	44	55	63
FWA s.773 – Unlawful termination – lodgment to finalisation	4	9	13	20	41	45	63	87

FWA = Fair Work Act

Wages and conditions

Minimum entitlements for wages and conditions of employment are most often found in enterprise agreements or modern awards. Employers must provide their employees with at least their minimum entitlements.

Some employees are not covered by an award or an enterprise agreement. For these employees, a safety net of minimum wages and conditions is created by the national minimum wage order and the National Employment Standards (NES).

Annual wage review

Reviewing and setting minimum wages has been a key function of Australia's national workplace relations tribunal since it was first established as a court in the early 1900s.

Under the Fair Work Act, each year the Commission must review the national minimum wage for employees not covered by awards or agreements, and modern award minimum wages.

The Annual Wage Review 2018–19 decision directly affects more than 2.3 million employees who have their wages set by an award, and a significant number of employees paid at junior or apprentice/trainee rates based on the national minimum wage.

Panel

Each year, a seven-member expert panel is constituted to conduct the wage review. The panel comprises:

- the President of the Commission
- three other full-time Members of the Commission
- three part-time Members with knowledge of, or experience in, workplace relations, economics, social policy, business, industry or commerce.

The panel must review minimum wages in modern awards and transitional instruments, as well as the national minimum wage order from the previous annual wage review. In accordance with objectives set out in the Fair Work Act, the panel takes into account specific economic, social and collective bargaining considerations, such as:

- promoting social inclusion through increased workforce participation
- relative living standards and the needs of the low paid
- the principle of equal remuneration for work of equal or comparable value
- various economic considerations.

Decision

On 30 May 2019, the panel issued its decision to:

- award an increase to the national minimum wage of 3 per cent to \$740.80 per week, or \$19.49 per hour based on a 38-hour week – this is an increase of \$21.60 per week or 56 cents per hour
- increase all modern award minimum wages and most transitional instrument wages by 3 per cent.

The panel's determinations came into operation on 1 July 2019 and took effect from the first full pay period on or after that date.

You can read the decision at [2019] FWCFB 3500 or the summary on our website at www.fwc.gov.au/awards-agreements/minimum-wages-conditions/annual-wage-reviews/annual-wage-review-2018-19/decisions.

Timeliness

The 2018–19 Annual Wage Review decision was issued on 30 May 2019, well before the portfolio budget statements target of 30 June.

Modern awards

Modern awards, together with the NES, provide a minimum safety net of terms and conditions for employees. There are 122 industry and occupational modern awards operating across Australia.

In addition, at 30 June 2019 there were 33 modern awards covering specific enterprises or state public sector bodies that are part of the national workplace relations system.

4 yearly review

With effect from 1 January 2019, the Australian Parliament has repealed those sections of the Fair Work Act that provide for the 4 yearly review of modern awards – see the *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018* (Amending Act). Although it will no longer conduct 4 yearly reviews of modern awards, the Commission will complete the review that is currently underway.

Prior to passage of the Amending Act, the Fair Work Act had required the Commission to review all modern awards once every four years. The current 4 yearly review began in February 2014 and is expected to be completed in 2020. The review is focused on the 122 industry and occupational modern awards. The 33 modern enterprise or state reference modern awards will be considered as part of a separate process commencing in 2019–20.

Wages and conditions (cont.)

The review's initial stage considered jurisdictional issues. Having dealt with those matters, the Commission then began to review four groups of individual awards and 17 common issues that apply across multiple awards.

Throughout the review, the Commission has welcomed and encouraged input from those with an interest in how award provisions apply in the workplace.

The review is a significant and complex body of work. During 2018–19, the Commission:

- held 170 hearings, conferences or mentions
- issued 68 decisions and 63 statements
- posted 3,565 documents to its website
- sent 474 emails to subscribers.

Exposure drafts

As part of the 4 yearly review, the Commission develops and publishes exposure drafts for revised versions of each modern award. Exposure drafts are updated and republished as issues are determined.

Exposure drafts for all awards of general application have been produced and published for comment. After extensive consultation with interested parties, the majority of issues relating to exposure drafts in groups 1, 2, 3 and 4 have been finalised.

In 2018–19, a number of Full Benches of the Commission made decisions relating to substantive claims to change entitlements in a number of modern awards. Determinations dealing with substantive claims covered issues such as increases to minimum rates of pay for pharmacists, coverage of employees under the Alpine Resorts Award and hours of work and rostering for health professionals.

Plain language drafting

The plain language redrafting process began in 2015–16, when the Commission conducted a pilot to create a plain language draft of the Pharmacy Industry award, including using a plain language drafting expert and incorporating feedback from industrial parties and users.

Modern awards that have been selected for the plain language drafting process were detailed in the 2017–18 Annual Report. Certain modern awards were selected for the process taking into consideration a number of factors, including industries identified by the Fair Work Ombudsman as having high levels of non-compliance, and high levels of award-reliant small businesses.

In 2018–19, the Commission continued the second tranche of plain language drafting. Processes for the Pharmacy Award, the Clerks Award, the Restaurant Award, the Hospitality Award, the Cleaning Services Award 2010, the Security Services Award 2010, and the General Retail Award have been completed or are nearing completion.

Processes for the Fast Food Industry Award 2010 and the Hair and Beauty Industry Award 2010 will commence in the second half of 2019.

The Commission will apply plain language drafting principles to new award provisions that may arise from common issues and to a number of standard clauses found in all awards in the second half of 2019. The exposure drafts produced during the review will also be restructured in accordance with the plain language guidelines during 2019–20.

Common issues

The Commission has identified 17 common issues across modern awards. They comprise the 13 issues listed in the 2015–16 Annual Report, three issues listed in the 2016–17 Annual Report, and one issue identified in the 2017–18 Annual Report. No additional common issues have been identified in the 2018–19 reporting period.

The majority of common issues have now been heard and determined by various Full Benches of the Commission.

In 2018–19, a number of common issues were finalised, including:

- Casual and part-time employment – A clause relating to casual conversion was inserted into 84 modern awards in October 2018. An issue relating to whether casual employees under the Horticulture Award were entitled to overtime penalty rates was also determined by the Full Bench.
- Family and domestic violence – As outlined in the 2017–18 Annual Report, the new entitlement for five days unpaid leave relating to family and domestic violence was incorporated into 123 modern awards on 1 August 2018. In June 2021, the Full Bench will review the scope of the unpaid leave entitlement and consider whether employees should be able to access paid domestic violence leave.
- Family-friendly working arrangements – This matter was finalised in 2018–19 with the insertion of a provision relating to flexible work arrangements for employees who are parents, carers, 55 years or older or experiencing violence.
- Overtime for casuals – This common issue continued throughout 2018–19, with parties undergoing a submission and report-back process regarding the majority of modern awards.
- Payment of wages – 89 modern awards were varied to include a new clause dealing with payment of wages on termination of employment.

Wages and conditions (cont.)

Enterprise instruments

Enterprise instruments are former federal or state awards that covered employees in a single enterprise or a group of related enterprises.

On 31 December 2013, all enterprise instruments terminated unless an application had been made to modernise them.

The Commission received 141 applications to modernise enterprise instruments. Of these, one is outstanding. Finalisation of this matter depends on the outcomes of other matters that are being dealt with as part of the 4 yearly review of modern awards.

State reference public sector transitional awards

State reference public sector transitional awards applied to public sector employees in Victoria and some local government employees in Tasmania. The Fair Work Act requires the Commission to modernise these awards if no application was made to terminate or modernise them by 31 December 2013. There are currently eight state reference public sector modern awards.

Enterprise agreements



4,932

Applications lodged



5,370

Applications finalised

Enterprise agreements – finalisation of matters



Enterprise agreements (cont.)

An enterprise agreement is a binding instrument made between an employer and employees – or, in the case of a greenfields agreement, between an employer and relevant unions – that governs terms and conditions of employment.

Applications for enterprise agreement approvals are the second most common type of application lodged with the Commission. As well as assessing and approving agreements, the Commission assists parties with the process of making agreements, and with resolving disputes that arise during bargaining or under agreements already in operation.

Approval of enterprise agreements

Before approving an enterprise agreement, the Commission must be satisfied that it meets criteria set out in the Fair Work Act, including the ‘better off overall test’ (BOOT). This test requires that each employee covered by the agreement will be better off overall than under the relevant modern award.

The Commission must also be satisfied that required pre-approval steps have been taken, that the group of employees covered by the agreement was fairly chosen, and that the agreement:

- has been genuinely agreed to by the relevant employees
- was adequately explained to employees
- does not contain terms that exclude or have the effect of excluding the NES or a provision of the NES
- does not include any unlawful terms or designated outworker terms
- specifies a date as its nominal expiry date (not more than four years after the date of Commission approval)
- provides a dispute settlement procedure
- includes a flexibility clause and a consultation clause.



Significant decision – when is a genuine new enterprise established?

The West Gate Tunnel Project is a major Victorian infrastructure project being undertaken in partnership between the Victorian Government and one of the world’s largest toll-road operators, Transurban. The joint venture partners sought to negotiate and make two greenfields agreements. While they were negotiating, the joint venture partners and several of their subcontractors undertook design work, geological testing, service relocations and other works.

They applied to the Commission for approval of the greenfields agreements despite union opposition. As the enterprise to which the agreements related had been established by the time the application was made, the Commission decided that the agreements did not relate to a genuine new enterprise, and so it could not be approve the agreements.

The decision in *Applications by CPB Contractors Pty Ltd & John Holland Pty Ltd* is at [2019] FWC 1122.

Performance overview

In 2018–19:

- 4,932 applications for approval of an enterprise agreement were lodged
- 5,370 agreements were finalised, of which 88 per cent (4,709) were approved, 2 per cent (85) were refused and 11 per cent (576) were withdrawn
- of the applications that were approved, 66 per cent (3,097) were approved with an undertaking.

Information and tools provided by the Commission to assist parties making an enterprise agreement continued to be highly utilised, including:

- comprehensive online enterprise agreement benchbook
- step-by-step guide to making compliant single-enterprise agreements
- 10 tips for agreement making to assist with compliance about process
- online automated date calculator that provides dates that comply with all legislative requirements
- online automated *Guide: Notice of Employee Representational Rights* (NERR) generator that provides parties with a compliant Notice for their specific circumstances
- legislative checklist about varying single-enterprise agreements
- weekly Bulletin and Quarterly Practitioner Update on case law to subscribers (including guidance on specific matters that result in common mistakes, such as model terms for NES precedence clauses).

In 2018–19, the website received:

- 1,050,918 page views regarding enterprise agreements and 33,665 downloads of the enterprise agreements benchbook
- 9,656 downloads of the step-by-step guide to making a single-enterprise agreement
- 11,466 page views or downloads of the NERR
- 3,467 downloads of the single-enterprise agreement legislative checklist
- 10,318 page views of the single-enterprise agreement date calculator, which assists parties in understanding whether they have met legislative timeframes.

Performance discussion

The number of applications for approval of an enterprise agreement decreased slightly in 2018–19 as shown in Table 17.

Enterprise agreements (cont.)

Table 17: Enterprise agreements – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.185 – Single-enterprise	4,694	5,102	5,474	5,238	5,118	4,476	5,391	5,153
FWA s.185 – Greenfields ¹	202	149	177	258	216	128	173	262
FWA s.185 – Multi-enterprise	36	36	47	33	36	35	42	34
Total	4,932	5,287	5,698	5,529	5,370	4,639	5,606	5,449

1 The figures for 2018-19 do not include three applications made under s.182(4).

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Finalisation of matters

In 2018-19, a total of 5,370 enterprise agreements were finalised, 9 per cent more than were lodged as shown in Table 17. This demonstrates the Commission's improved performance in dealing with agreement applications in 2018-19 and reflects the Commission's successful efforts to substantially reduce the backlog of agreements during the reporting cycle.

Table 18: Enterprise agreements – finalisation of matters

Matter type	No. approved				No. dismissed				No. withdrawn			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.185 – Single-enterprise	4,475	3,658	4,663	4,523	84	42	39	48	559	776	689	582
FWA s.185 – Greenfields ¹	204	118	162	252	1	0	0	1	11	10	11	9
FWA s.185 – Multi-enterprise	30	27	33	26	0	0	0	4	6	8	9	4
Total	4,709	3,803	4,858	4,801	85	42	39	53	576	794	709	595

1 The figures for 2018-19 do not include three applications made under s.182(4).

FWA = Fair Work Act

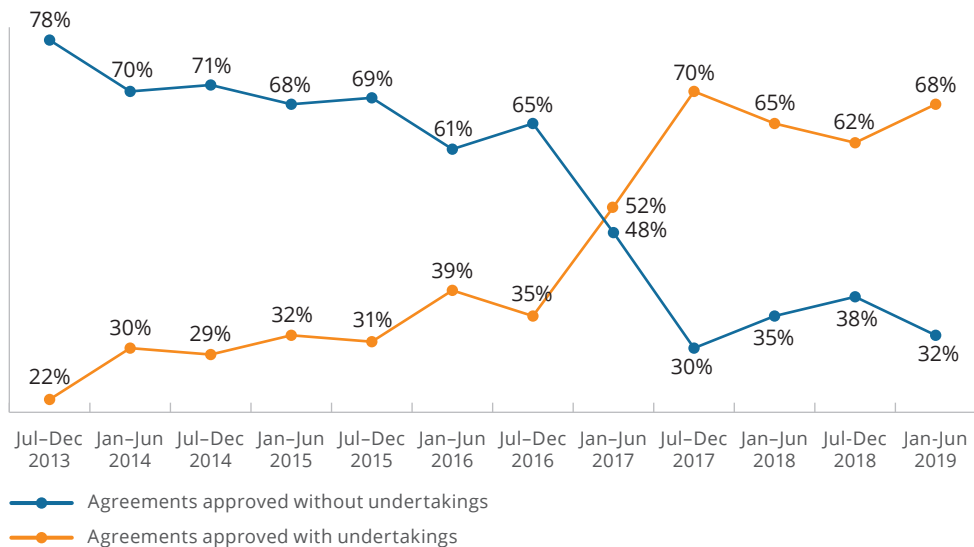
Table 19 sets out the number of agreements approved with and without undertakings over the past four reporting periods. Figure 5 shows that in 2018-19 there was an increase in the proportion of agreements approved with undertakings and a corresponding decrease in those approved without undertakings.

Table 19: Enterprise agreements – agreements approved, with and without undertakings

Matter type	No. approved without undertakings				No. approved with undertakings			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.185 – Single-enterprise	1,473	1,159	2,701	2,890	3,000	2,499	1,962	1,633
FWA s.185 – Greenfields	129	71	128	221	75	47	33	31
FWA s.185 – Multi-enterprise	8	5	20	15	22	22	13	11
Total	1,610	1,235	2,849	3,126	3,097	2,568	2,008	1,675

FWA = Fair Work Act

Figure 5: Enterprise agreements – agreements approved with and without undertakings





Timeliness discussion

The making and approval of agreements involves some complexity. The Commission is required to ensure that each agreement and approval application complies with the requirements of the Fair Work Act. Additionally, from time to time, decisions of the Commission, the Federal Court of Australia and the High Court of Australia clarify how the Fair Work Act is to be applied by Members in approving applications for enterprise agreements. This can mean that following such a decision, approval applications are required to include additional information before a Member can be satisfied that they should be approved.

From late 2016 enterprise agreement applications have been determined by Members with the assistance of an administrative 'agreement triage' process. The triage process involves a consistent and comprehensive analysis of approval applications. The analysis includes completion of a checklist which sets out the various statutory requirements and may involve modelling and analysis that compares entitlements between the agreement and the modern award based on anticipated rosters.

At all times the judgment as to whether an agreement should be approved, or whether an undertaking should be sought or accepted, remains with the Member who is dealing with the application. However, the triage process assists Members to exercise their function in a consistent and rigorous way.

Consistency in decision-making is an important element of access to justice. Broadly speaking, tribunal decision makers should reach consistent decisions on cases with common facts and circumstances, within the parameters of the discretion conferred upon them by the legislation.

Rigour in the decision-making process is important. The consequences of failing to identify either a technical or a substantive defect in the agreement making process or the agreement itself are significant. An agreement invalidly approved exposes all parties to it to a collateral attack in the courts, creating uncertainty as to whether the agreement is a legal nullity.

Since 2017, most agreement applications have been assessed as not including the required information or otherwise deficient at the time of lodgment. As illustrated in Figure 5, around two-thirds of agreements have required undertakings before they can be approved. Additionally many more were assessed as being incomplete, requiring follow up as the Member did not have adequate information to be satisfied that the agreement could be validly approved, or the application had technical defects, such as an agreement not having been correctly signed that delayed the approval process.

Enterprise agreements (cont.)

The additional work created by the significant increase in applications assessed as incomplete or non-compliant, together with the factors listed below, created a substantial backlog which caused a decline in timeliness:

- an almost threefold increase in applications to vary agreements as a result of changes to the *Tendering and Performance of Building Work 2016 Building Code 2016*
- a significant spike in approval applications lodged in December 2017
- a significant spike in applications to terminate agreements
- the impact of administering a large number of applications which had been held in abeyance pending passage of the *Fair Work Amendment (Repeal of 4 Yearly Reviews and other measures) Bill 2017*.

Whilst it has taken some time for the backlog to be resolved, this has now been achieved. The Commission is confident that the recent improvement in timeliness performance can be sustained.

The Commission took decisive action during 2018–19 to improve timeliness, and to assist parties to lodge complete and compliant applications for approval. Recent measures have included:

- streamlining communication by sending correspondence seeking further information or requesting undertakings directly from the relevant Member's Chambers
- focusing resources on 'simple applications' to encourage parties to lodge complete and compliant applications
- publishing a guide to assist parties to make compliant agreement applications, including practical information on how to resolve common mistakes
- increasing resources allocated to assessing agreement applications
- establishing a user group comprising of the employers and organisations that lodged, or were associated with lodging, a substantial number of agreement applications in 2018
- closely monitoring and reporting on performance.

The Commission continues to be focused on improving our performance and will continue to explore opportunities to achieve this in 2019–20.

Changes to the statutory framework

Schedule 2 to the Amending Act commenced on 12 December 2018.

Prior to the commencement of the amendments, the Commission had no capacity to approve enterprise agreements where there had been certain errors in the agreement making process under the Fair Work Act. Such errors include minor defects in the content or form of the Notice of Employee Representational Rights and failure to take certain pre-approval steps. Non-compliance with such requirements was commonly the reason why applicants withdrew approval applications (794 approval applications were withdrawn in 2017–18).

The amendments introduced a new s.188(2) of the Fair Work Act that allows the Commission to find an agreement has been ‘genuinely agreed’ to despite certain minor procedural or technical errors, if the Commission is satisfied that:

- the agreement would have been genuinely agreed to but for those errors
- the employees covered by the agreement were not likely to have been disadvantaged by the errors.

On passage of the Amending Act, the President of the Commission convened a Full Bench to provide parties with guidance as to the proper construction of the new s.188(2). The Full Bench issued its decision on 16 January 2019.

The amendments have led to a significant reduction in the number of applications that need to be withdrawn or are not approved, particularly those that are withdrawn less than 35 days after lodgment (which suggests they were withdrawn due to a technical error). The overall proportion of application withdrawals has dropped from around 17 per cent of lodgments in the six-month period from July to December 2018 to 5 per cent in the period from January to June 2019.

Timeliness

The Commission amended its portfolio budget statement target for 2018–19 to refer to the approval of agreements without undertakings. The Commission finalised agreements without undertakings in a median time of 30 days (including single-enterprise, greenfields and multi-enterprise agreements), as shown in Table 20.

Table 20: Enterprise agreements – timeliness, performance against PBS target

Matter type	PBS target (median days) ¹	Time to approve agreement (median days)			
		2018–19	2017–18	2016–17	2015–16
FWA s.185 – Approval of enterprise agreement	32	30	76	32	18

1 Target from the 2018–19 Employment Portfolio Budget Statements, measuring the time taken to finalise agreement approval applications that were approved without undertakings. Employment Portfolio Budget Statements for 2015–16 to 2017–18 measured all agreement approval applications, including those that were approved with and without undertakings and those that were dismissed or withdrawn.

FWA = Fair Work Act

Note: The results for 2018–19 have been calculated based on agreements lodged and finalised in 2018–19. Results for previous years have been calculated based on matters finalised in those years.

The median represents the middle of a distribution of values arranged such that half of the values are above the median and half are below. The median is commonly used to measure the properties of datasets as it is less affected by outliers than the mean, such as complicated and contested agreements that can take an unusually long time to approve. It is therefore a better representation of the time it takes most agreements to be approved, than the mean.

Enterprise agreements (cont.)

Additional benchmarks are reported against, providing further information about the time taken to approve applications that are complete and compliant at lodgment (described as 'simple' agreements) and applications that are assessed as requiring additional information and/or potential defects (described as 'complex' agreements). Complex agreements take longer to process because multiple interactions between the Commission and the parties are usually required in order to determine such applications.

Table 21 provides a breakdown of timeliness in approving single-enterprise, greenfields and multi-enterprise agreements separately, with and without undertakings.

Table 21: Enterprise agreements – timeliness, approval of agreements with and without undertakings

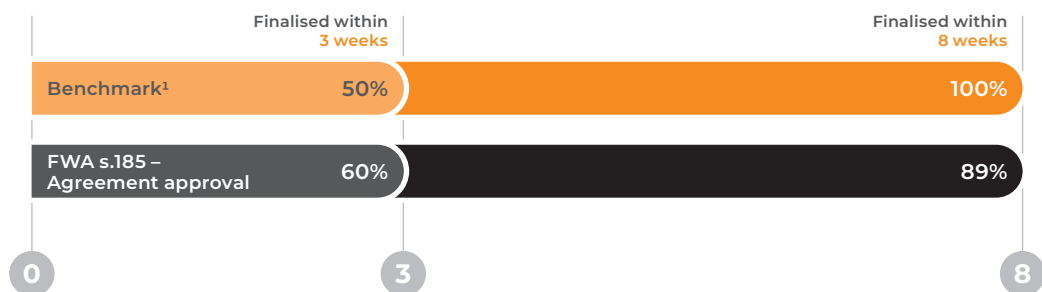
Matter type	Proportion of agreement approvals	Time to approve without undertakings (median days)				Time to approve with undertakings (median days)			
		2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.185 – Single-enterprise	95%	34	32	15	15	122	93	48	27
FWA s.185 – Greenfields	4%	17	32	13	11	48	54	43	21
FWA s.185 – Multi-enterprise	1%	86	69	22	21	145	115	101	28

FWA = Fair Work Act

The decline in performance in the reporting period reflects the impact of a backlog from the previous reporting period that was not resolved until the latter part of the 2018-19 financial year.

Figures 6 and 7 show the Commission's performance against the internal timeliness benchmarks in 2018-19.

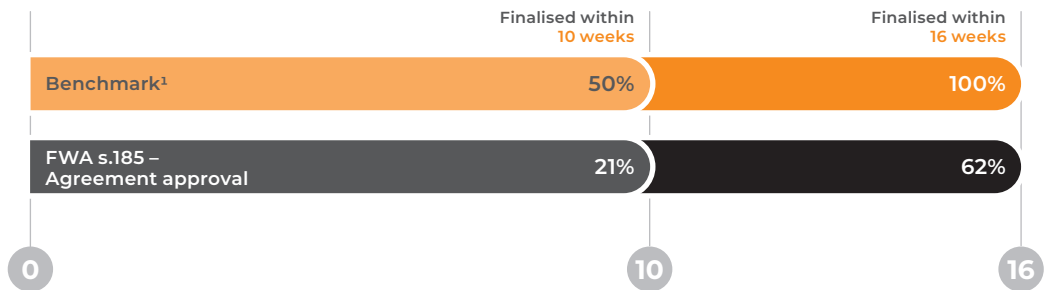
Figure 6: Enterprise agreements – timeliness, finalisation of simple applications



¹ Benchmark set by the President.

FWA = Fair Work Act

Figure 7: Enterprise agreements – timeliness, finalisation of complex applications



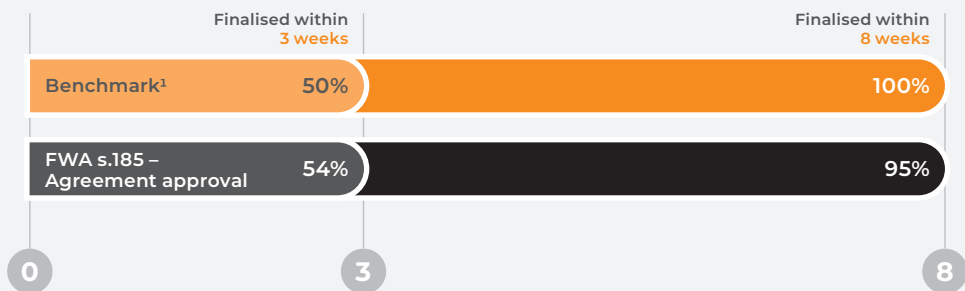
1 Benchmark set by the President.

FWA = Fair Work Act

IMPORTANT UPDATE

The Commission’s performance against its timeliness benchmarks improved significantly between 9 February and 8 September 2019, as shown in figures 8 and 9.

Figure 8: Enterprise agreements – timeliness, finalisation of simple applications 9 February to 8 September 2019

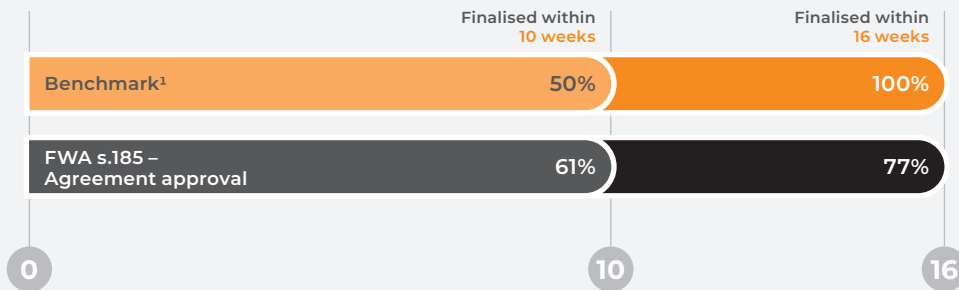


1 Benchmark set by the President.

FWA = Fair Work Act

Enterprise agreements (cont.)

Figure 9: Enterprise agreements – timeliness, finalisation of complex applications 9 February to 8 September 2019



1 Benchmark set by the President.
FWA = Fair Work Act

The Commission has successfully addressed the decline in timeliness for approving agreements which was reported in last year's Annual Report. This decline had been primarily caused by the increase in applications assessed as non-compliant or incomplete.

From a peak of 2,063 applications in January 2019, the number of matters on hand has reduced to less than 550 applications.

Based on performance in the last seven months, compliant and complete applications are being approved within a median of **17 days from lodgment***. Similarly, all applications, simple and complex, are being approved in a median of **34 days from lodgment***.

* Based on matters lodged and finalised for the seven-month period 9 February 2019 – 8 September 2019.



In focus – engaging with agreements parties

In 2018–19 the Commission established an Agreements User Group (AUG). The AUG comprises 31 large employers, peak bodies, employer organisations and unions who were involved in the greatest number of agreement approval applications in 2018.

The AUG is a consultative forum that enables frequent users to provide feedback to the Commission on our processes and input into future initiatives. Two meetings have been held so far in 2019 chaired by the President and the Practice Leader for Agreements, Deputy President Masson.

At the first meeting the President discussed the impact of the recently passed Amending Act while the second meeting included a demonstration of the proposed smart forms for agreement approval applications which will be released later in 2019.

Arising from the research behind the Making Compliant Agreement Applications guide released in February 2019, members of the AUG were also provided with tailored information regarding common issues in agreement approval applications in their sector.



Significant decision – can a Minister give evidence during consideration of an agreement?

The Metropolitan and Fire and Emergency Services Board (MFESB) applied for approval of the Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Operational Staff Agreement 2016.

The Minister for Small and Family Business, the Workplace and Deregulation (the Minister) submitted that the agreement contained discriminatory and objectionable terms for part-time employees and employees entitled to flexible working arrangements. The Minister filed submissions and evidentiary material in objection to approval of the agreement. The MFESB and the United Firefighters Union of Australia (UFU) raised objections to the Minister's material.

The Commission considered whether the Minister should be allowed to present evidence. The UFU opposed the Minister giving evidence and argued that the material sought to be relied upon by the Minister was of little relevance. The MFESB argued that the Minister's materials were of little value in the context of this proceeding. However, it did not object to the Commission receiving it.

The Commission decided that it could not determine, at that time, whether the material was ultimately relevant. This would be determined in light of all of the evidence and after the full argument on the issues at the scheduled hearing.

The decision in *Application by the Metropolitan Fire and Emergency Services Board* is at [2018] FWC 3942.

Enterprise agreements (cont.)**Variation of enterprise agreements**

The Commission may vary an agreement before its nominal expiry date if a majority of affected employees cast a valid vote to approve the variation and an application is lodged with the Commission under s.210 of the Fair Work Act. The variation has no effect unless it is approved by the Commission.

The Commission may also vary an enterprise agreement under s.217 of the Fair Work Act to remove an ambiguity or uncertainty, on application by any of the following:

- one or more of the employers covered by the agreement
- an employee covered by the agreement
- an employee organisation covered by the agreement.

The Commission must also review an enterprise agreement that is referred by the Australian Human Rights Commission under s.46PW of the *Australian Human Rights Commission Act 1986* (which deals with discriminatory industrial instruments).

In 2018–19, 89 per cent of applications to vary agreements were made under s.210 of the Fair Work Act, as shown in Table 22. The number of applications made under s.210 returned to the levels seen in 2016–17 and 2015–16 after a significant increase of 174 per cent in 2017–18. The increase was mainly due to a large number of applications to vary agreements in the construction sector in order to comply with the *Code for the tendering and performance of building work 2016*, which commenced in December 2016.

Table 22: Applications to vary enterprise agreements – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018–19	2017–18	2016–17	2015–16	2018–19	2017–18	2016–17	2015–16
FWA s.210 – Application for approval of a variation of an enterprise agreement	188	564	206	187	259	485	194	186
FWA s.217 – Application to vary an agreement to remove an ambiguity or uncertainty	23	38	21	32	23	40	21	34
FWA s.218 – Variation of an agreement on referral by the Australian Human Rights Commission	2	0	0	0	0	0	0	0
Total	211	602	227	219	282	525	215	220

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Termination of enterprise agreements

Under the Fair Work Act, an enterprise agreement continues to operate after its nominal expiry date until it is replaced by a new agreement or the Commission terminates the agreement on application. The process required to terminate an agreement depends on whether termination is sought before or after the agreement's nominal expiry date.

An employer and its employees may agree to terminate an enterprise agreement. Termination is agreed through a vote of employees covered by the agreement – a majority of employees who cast a valid vote must agree to the termination.

If an enterprise agreement has passed its nominal expiry date, any of the employers, employees or unions covered by the agreement may apply to the Commission for the termination of the agreement.

If the Commission decides to terminate an enterprise agreement under these provisions, the termination operates from the day specified in the Commission's decision.

Table 23 shows the numbers of applications to terminate an agreement that were lodged and finalised in 2018-19. The majority of applications lodged (54 per cent) were made after the agreement's expiry date, under s.225 of the Fair Work Act. The number of applications in 2018-19 decreased by 7 per cent after a 30 per cent increase in 2017-18.

Table 23: Applications to terminate enterprise agreements – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.222 – Application for approval of a termination of an enterprise agreement	221	130	97	92	222	124	93	92
FWA s.225 – Application for termination of an enterprise agreement after its nominal expiry date	263	388	303	311	266	384	297	310
Total	484	518	400	403	488	508	390	402

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Industrial action

The Fair Work Act describes industrial action as any of the following:

- employees performing their work differently to the way it is normally performed, resulting in a limitation on, or delay in, the performance of the work
- employees placing a ban, limitation or restriction on the performance of work or the acceptance of work
- employees failing or refusing to attend or perform work
- employers locking out employees from their employment.

Industrial action does not include action taken by one party that is authorised or agreed to by the other party, or action based on a reasonable concern of an employee about an imminent risk to their health or safety.

The Fair Work Act distinguishes between ‘protected’ (lawful) industrial action taken during bargaining for a new enterprise agreement and ‘unprotected’ (unlawful) industrial action.

Protected industrial action is taken so that employees or employers can support or advance their claims during bargaining in relation to a proposed enterprise agreement.

For industrial action to be protected, a majority of employees must approve a list of proposed actions in a secret ballot process called a ‘protected action ballot’. The Commission can order a protected action ballot if satisfied that the employees’ bargaining representative has been and is genuinely trying to reach agreement with the employer.

The Commission may make orders to stop or prevent protected industrial action in specified circumstances. The Commission must suspend or terminate protected industrial action where it is endangering the life, personal safety, health or welfare of the population or part of it or is causing significant damage to the Australian economy. The Commission must, as far as practicable, determine these applications within five days of lodgment, or make an interim order suspending the action if this timeframe cannot be met.

Where industrial action, or threatened industrial action, is unprotected, an application can be made to the Commission to stop or prevent it. The Commission must determine these applications within two days of lodgment, or make an interim order stopping the action within two working days.

Performance

The number of applications in relation to industrial action decreased by 2 per cent, to 843 in 2018–19 from 863 in 2017–18, as shown in Table 24.

In 2018–19, the industrial action benchbook was viewed or downloaded 41,907 times.

Consistent with results in previous years, the most common types of applications lodged were applications for a protected action ballot order (69 per cent) and applications to extend the 30-day period in which industrial action is authorised by a protected action ballot (18 per cent). Applications for the variation or revocation of a protected action ballot order made up 6 per cent of cases in 2018–19, compared with 9 per cent in 2017–18.

In 2018-19, the Commission received 47 applications for an order to stop or prevent industrial action that is not (or would not be) protected industrial action. That total was lower than the 54 applications lodged in 2017-18 and shows a continuing overall decline in unprotected industrial action cases over a four-year period.

Table 24: Industrial action – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.418 – Application for an order that industrial action by employees or employers stop etc.	47	54	43	67	46	51	49	61
FWA s.419 – Application for an order that industrial action by non-national system employees or employers stop etc.	0	0	0	0	0	0	0	0
FWA s.423 – Application to suspend or terminate protected industrial action – significant economic harm etc.	1	1	2	1	1	2	0	1
FWA s.424 – Application to suspend or terminate protected industrial action – endangering life etc.	9	9	8	14	10	9	8	14
FWA s.425 – Application to suspend protected industrial action – cooling off	3	4	6	3	2	4	7	2
FWA s.426 – Application to suspend protected industrial action – significant harm to third party	1	2	0	0	1	0	0	0
FWA s.437 – Application for a protected action ballot order	578	579	537	960	577	583	537	962
FWA s.447 – Application for variation of protected action ballot order	15	27	7	21	14	27	7	21
FWA s.448 – Application for revocation of protected action ballot order	33	53	37	48	34	53	38	48
FWA s.459 – Application to extend the 30-day period in which industrial action is authorised by protected action ballot	150	130	150	154	153	137	148	152
FWA s.472 – Application for an order relating to certain partial work bans	6	4	4	4	5	6	2	4
Total	843	863	794	1,272	843	872	796	1,265

FWA = Fair Work Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Industrial action (cont.)**Timeliness**

To ensure that applications are dealt with quickly, Members may hear matters out of hours, including on weekends. If an application seeking an order that industrial action stop cannot be determined within two days, the presiding Member can issue an interim order.

In 2018–19, the Commission largely matched its performance in 2017–18, as shown in Table 25. While the time taken from lodgment to first hearing for an application for an order that industrial action stop increased by one day compared with 2017–18, performance still met the key performance indicator of two days.

Table 25: Industrial action – timeliness, protected action ballot orders and orders to stop action

Process	Key performance indicator	Days elapsed							
		In 50% of matters				In 90% of matters			
		2018–19	2017–18	2016–17	2015–16	2018–19	2017–18	2016–17	2015–16
FWA s.418 – Application for an order that industrial action by employees or employers stop etc. – lodgment to first hearing	2 days	2	1	1	1	2	2	3	3
FWA s.437 – Application for a protected action ballot order – lodgment to first hearing	5 days	4	4	4	4	7	7	8	8
FWA s.437 – Application for a protected action ballot order – lodgment to determination	5 days	3	3	4	6	7	7	9	8

FWA = Fair Work Act



Significant decision – when is industrial action protected?

On 7 November 2018, 128 Sydney bus drivers called in sick on the same day during negotiations for a new enterprise agreement. The number of employees absent on personal leave resulted in the bus company being unable to operate about 300 bus services, including bus services for school children.

The Commission found that the extraordinary number of drivers who took personal leave on that day indicated that they were engaged in a 'covert campaign', which satisfied the meaning of industrial action that was unprotected under the Fair Work Act.

The Commission issued interim orders against the 128 bus drivers, but later heard submissions from the Transport Workers' Union of Australia on behalf of some of the drivers to support their reasons for taking leave. The Commission issued final orders that those who took unprotected industrial action could not be paid for their absence from work on 7 November 2018 and banned any industrial action until 30 November 2018.

The decision in *Hillsbus Co. Pty Ltd v Gurdev Singh Bajwa & Others* is at [2018] FWC 6861.

Industrial disputes

The Commission can assist parties in resolving a wide range of disputes under the Fair Work Act.

The majority of disputes relate to the terms of an enterprise agreement or a modern award. The Commission's capacity to deal with such disputes depends on the nature of the dispute resolution term in the relevant agreement or modern award. Most commonly, the Commission is empowered to resolve a dispute through conciliation, mediation, an opinion or a recommendation. Some agreement terms also empower the Commission to arbitrate a dispute with a binding determination.

Applications may also be lodged:

- under s.526 of the Fair Work Act, to deal with disputes where employees have been stood down due to industrial action, a breakdown of machinery or equipment or any other stoppage of work where the employer cannot reasonably be held responsible
- under s.699 or s.709 of the repealed *Workplace Relations Act 1996*, as amended by the *Workplace Relations Amendment (Work Choices) Act 2005*, to deal with disputes involving agreements that were made under the *Workplace Relations Act 1996*.

Performance

In 2018–19:

- 1,579 applications in relation to disputes were lodged
- 1,569 applications (99 per cent), including 35 applications about flexible working arrangements, were made under s.739 of the Fair Work Act.

Each year, the large majority (around 99 per cent) of applications to deal with disputes in relation to awards, agreements and contracts are made under s.739.

The number of applications made under s.739 of the Fair Work Act decreased by 3 per cent, to 1,569 in 2018–19 after decreasing by 17 per cent in 2017–18, as shown in Table 26. This is consistent with a longer-term decline, with the number of matters finalised decreasing by 23 per cent between 2015–16 and 2018–19.

Consistent with results in previous years, only a small number of applications in 2018–19 were lodged under s.526 of the Fair Work Act. In 2018–19, there were no applications made under the *Workplace Relations Act*.

Table 26: Dispute applications – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.526 – Application to deal with a dispute involving stand down	10	9	10	17	6	8	12	21
WRA s.699 – Application to Fair Work Australia to have an alternative dispute resolution process conducted	0	0	0	1	0	0	0	1
WRA s.709 – Application to Fair Work Australia to have a dispute resolution process conducted under a workplace agreement	0	4	6	11	1	3	6	17
FWA s.739 – Application to deal with a dispute	1,534	1,576	1,888	2,001	1,425	1,542	1,695	1,932
FWA s.739 – Application to deal with a dispute in relation to flexible working arrangements	35	41	52	32	40	36	45	34
Total	1,579	1,630	1,956	2,062	1,472	1,589	1,758	2,005

FWA = Fair Work Act, WRA = *Workplace Relations Act 1996* (repealed)

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Timeliness

In 2018-19, the Commission held the first conference dealing with a dispute in a median of 19 days from lodgment of the application, with a conference being held within 49 days of lodgment in 90 per cent of cases, as shown in Table 27. This is consistent with the time taken to deal with a dispute in 2017-18.

Industrial disputes (cont.)**Table 27: Dispute applications – timeliness**

Matter type	Days elapsed							
	In 50% of matters				In 90% of matters			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.739 – Application to deal with a dispute – lodgment to first conference	19	19	17	16	49	48	43	42

FWA = Fair Work Act



Significant decision – should personal leave be calculated in hours or days?

Under the National Employment Standards (NES), employees in Australia are entitled to 10 days of personal/carer's leave per year. The Australian Workers' Union (AWU) and AstraZeneca disputed how the company accrues and deducts personal/carer's leave for employees undertaking shift work. The length of shifts varied between employees between 8, 10.28 and 12 hours. As AstraZeneca calculated leave based on hours and not days, this meant that employees could exhaust their personal/carer's leave entitlement in 6, 7 or 9.5 shifts respectively. The AWU argued that this was less than the employees' NES entitlement.

The Commission found that leave is accrued in days and not hours. It noted that this might result in workers accruing more hours of paid personal/carer's leave in some cases. A day of leave is deducted when a day of leave is taken, regardless of the number of hours in a shift.

The decision in *The Australian Workers' Union v AstraZeneca Pty Ltd* is at [2018] FWC 4660.

New Approaches



Deputy President Booth facilitating interest-based bargaining between TAFE NSW management and officials and delegates from CPSU NSW, AWU and United Voice in July 2019

The New Approaches program is the framework through which the Commission performs its legislated function of promoting cooperative and productive workplace relations and preventing disputes.

New Approaches complements the Commission's dispute resolution and bargaining functions by providing a formal process to help parties to work together effectively and prevent disputes from occurring. The Commission can deal with a New Approaches application if parties at a workplace or business agree.

The New Approaches program enables the Commission to work with parties to:

- promote cooperative and productive workplace relations through interest-based approaches to bargaining for enterprise agreements
- develop new ways of resolving conflict or disputes at the workplace, using interest-based problem solving
- support the introduction of change, innovation and productivity improvements through new ways of collaborating, outside of the bargaining cycle and before a dispute occurs.

The Commission may provide:

- training in interest-based bargaining and dispute resolution
- training and assistance in collaborative workplace change, including training for consultative committees
- help with enterprise bargaining and the development of joint processes to implement enterprise agreements.

At 30 June 2019, the Commission was facilitating 26 open New Approaches matters.

New Approaches matters can remain open for a significant period, with the Commission providing ongoing support across a range of areas, including training, facilitation of negotiations, and the provision of advice and support to parties.

New Approaches (cont.)

In December 2018, a pilot evaluation survey was conducted with two sets of employers, Endeavour Energy and Sydney Water, and their trade union counterparts. As a result of feedback, the Commission will make changes to the survey in consultation with the New Approaches User Group.

Since February 2019, the Commission has administered a short baseline attitudinal survey at the commencement of each New Approaches file. We will administer a completion survey at selected milestones during the life of the file or at the conclusion of the file.

This year the Commission has focused on improving its educational materials. We engaged instructional designer Maura Fay to work with us to produce new presentations, collateral materials and videos.

Registered organisations

Both the Tribunal and the General Manager exercise powers and functions under the Registered Organisations Act concerning federally registered unions and employer organisations.

Matters dealt with by the organisations panel

The organisations panel deals with applications for registration, amalgamation and cancellation of registration of registered organisations, as well as changes to eligibility rules and name.

The organisations panel also considers non-routine applications for right of entry permits under the Fair Work Act.

In 2018–19, the Commission received 16 applications for matters that are dealt with by the organisations panel. Ten of those applications related to changes to eligibility rules.

In 2018–19, the organisations panel finalised eight applications, as shown in Table 28, compared with 18 applications in 2017–18 and 35 applications in 2016–17. The spike in 2016–17 arose from applications for extension of recognition of transitionally recognised associations (TRAs) seeking an extension of their recognition.

A TRA is a state-registered employer association or union that has been transitionally recognised under Schedule 1 to the Registered Organisations Act. Transitional recognition permits a TRA to represent its members in the national workplace relations system even though it is not a registered organisation under the Registered Organisations Act.

Transitional recognition ended on 1 January 2017. Only TRAs that obtain an extension of time from the Commission can remain transitionally recognised after that date.

Registered organisations (cont.)

Table 28: Registered organisations – organisations panel – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
ROA s.137A – Orders about representation rights of organisations of employees	0	1	1	0	0	2	0	2
ROA s.151(1) – Membership agreement with state-registered union	0	0	0	0	0	0	0	0
ROA s.152(2) – Assets and liabilities agreement with state-registered union	0	2	0	1	0	2	0	1
ROA s.158(1)(a) – Change of name	3	0	1	1	1	0	1	1
ROA s.158(1)(b) – Changes to eligibility rules	10	3	11	6	5	3	12	6
ROA s.18(a) – Registration of association of employers	0	1	3	1	0	1	3	2
ROA s.18(b) – Registration of association of employees	0	0	0	1	0	0	0	0
ROA s.30 – Cancellation of registration	2	2	2	1	1	2	2	3
ROA s.44(1) – Submission of amalgamation to ballot	1	0	1	0	1	1	0	0
ROA Sch.1, Cl.6(2) – Extension of transitional recognition	0	0	17	0	0	0	17	0
ROA Sch.1, Cl.6(3) – Extension of transitional recognition	0	7	0	0	0	7	0	0
Total	16	16	36	11	8	18	35	15

ROA = Registered Organisations Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Matters dealt with by the General Manager

The General Manager determines applications for alterations to the rules (other than most eligibility rules) of organisations registered under the Registered Organisations Act. Most applications for alterations to eligibility rules are considered by the organisations panel, but the General Manager can determine alterations to eligibility rules to extend them to cover persons already covered by state-registered unions or employer organisations under s.158A of the Registered Organisations Act.

In 2018–19, the General Manager and her delegate finalised 84 applications for alterations to rules of registered organisations, a decrease of 10 per cent compared with the previous year, as shown in Table 29.

Table 29: Registered organisations – General Manager – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018–19	2017–18	2016–17	2015–16	2018–19	2017–18	2016–17	2015–16
ROA s.159 – Notification of alteration of rules	81	83	97	99	83	88	91	105
ROA s.158A – Alteration of eligibility rules	1	1	14	6	1	5	5	4
Total	82	84	111	105	84	93	96	109

ROA = Registered Organisations Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

Timeliness

In 2018–19, 96 per cent of applications were assessed within 40 working days, consistent with the previous two reporting periods, as shown in Table 30.

Table 30: Registered organisations – General Manager – timeliness, alteration to rules

Matter type	Target	Percentage assessed within 40 days			
		2018–19	2017–18	2016–17	2015–16
ROA s.159 – Notification of alteration of rules	95	96	96	99	96

ROA = Registered Organisations Act

Registered organisations (cont.)

Appeals of Registered Organisations Commissioner decisions

Since the establishment of the Registered Organisations Commission on 1 May 2017, the Commission has been able to hear appeals from decisions of the Registered Organisations Commissioner.

Right of entry permits

The Commission exercises powers and functions concerning right of entry under the Fair Work Act and the *Work Health and Safety Act 2011* (WHS Act).

Part 3–4 of the Fair Work Act sets out the rights of officials of organisations who hold entry permits to enter premises for purposes related to representing their members. Division 6 of Part 3–4 empowers the Commission to issue right of entry permits, subject to certain considerations. The Commission must be satisfied that the proposed permit holder is a fit and proper person to hold a permit. This includes consideration of whether the proposed permit holder has received appropriate training.

A union official who holds a right of entry permit under the Fair Work Act can also apply for an entry permit under the WHS Act. The WHS Act allows permit holders to enter premises to inquire into suspected contraventions of the WHS Act and to consult and advise workers.

Commission staff process permit applications under the Fair Work Act and the WHS Act, and permits are issued by senior Commission staff under delegation from the President. Staff refer applications that are assessed as being ‘non-routine’ (where it is uncertain whether the statutory requirements have been met) to the organisations panel for determination by a Member. This provides applicants with an opportunity to present relevant evidence at a hearing.

Applications

The numbers of applications for entry permits lodged under the Fair Work Act and the WHS Act have been fairly consistent in recent years. In 2018–19, a total of 1,242 right of entry permit applications were lodged, a decrease of 8 per cent from the total of 1,350 in 2017–18, as shown in Table 31. A total of 113 applications for a work health and safety entry permit were lodged, an increase of 176 per cent compared with a total of 41 in 2017–18.

Table 31: Registered organisations – right of entry permits – applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.512 – Application for a right of entry permit	1,242	1,350	1,521	1,628	1,305	1,373	1,532	1,590
WHS s.131 – Application for a work health and safety entry permit	113	41	39	44	95	42	39	46
Total	1,355	1,391	1,560	1,672	1,400	1,415	1,571	1,636

FWA = Fair Work Act, WHSA = WHS Act

Note: The number of applications finalised does not equal the number of applications lodged in the financial year because some applications are finalised outside the year in which they are lodged.

The Commission issued a total of 1,376 permits in 2018-19, an increase of 2 per cent from the total of 1,350 in 2017-18, as shown in Table 32.

Of the 1,305 applications for a Fair Work Act right of entry permit that were finalised in 2018-19, 24 were assessed as being non-routine and were referred to the organisations panel for determination. Of these non-routine permit applications, 16 permits were issued (of which three were issued with conditions). The remaining two applications were withdrawn. Decisions concerning refusal to grant a permit under the Fair Work Act are published on the Commission's website.

A total of 24 applications were withdrawn for various reasons, most commonly after the applicant was informed that additional disclosure or further information was required.

Registered organisations (cont.)**Table 32: Registered organisations – right of entry permits – finalisation of matters**

Matter type	No. issued				No. refused				No. withdrawn			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
FWA s.512 – Application for a right of entry permit	1,285	1,315	1,468	1,520	0	2	2	7	20	56	62	63
WHS s.131 – Application for a work health and safety entry permit	91	35	33	30	0	0	0	0	4	7	8	16
Total	1,376	1,350	1,501	1,550	0	2	2	7	24	63	70	79

FWA = Fair Work Act, WHSA = WHS Act

Timeliness

In 2018-19, the Commission took a median of nine days to issue a Fair Work Act right of entry permit and a median of 13 days to issue a permit under the WHS Act, as shown in Table 33. This was a decrease in median processing times, compared with 16 days and 25 days respectively in 2017-18.

Table 33: Registered organisations – right of entry permits – timeliness, days to issue

Matter type	Median time to issue permit (days)			
	2018-19	2017-18	2016-17	2015-16
FWA s.512 – Application for a right of entry permit	9	16	13	9
WHS s.131 – Application for a work health and safety entry permit	13	25	20	14

FWA = Fair Work Act, WHSA = WHS Act

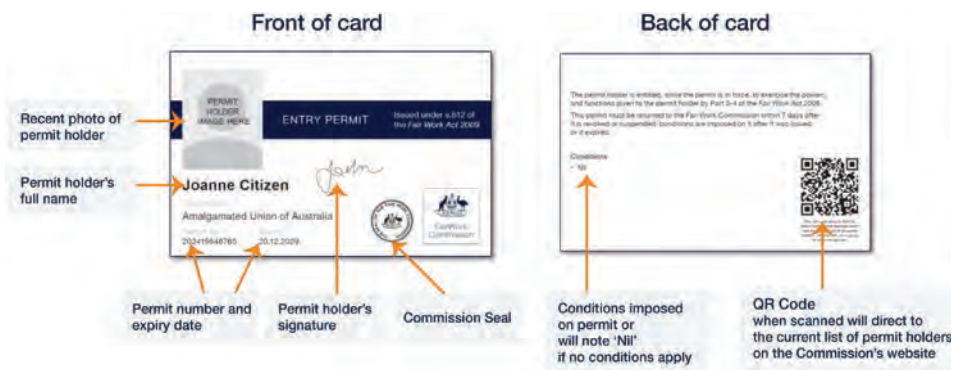
Note: Timeliness data presented in Table 50 of the 2016-17 Annual Report reported the average time to issue an entry permit. In order to be consistent with presentation of data elsewhere in this annual report, timeliness data for issuing entry permits is presented here as a median.



Case study – introducing new entry permit cards

Entry permit cards issued by the Commission changed on 1 July 2019 as a result of the *Fair Work Amendment (Modernising Right of Entry) Regulations 2019*. The Regulations require the new entry permit to contain the photo and signature of the permit holder.

Following consultation with stakeholders, including the Attorney-General's Department, we created a Commonwealth Government photo identity card which is issued in line with the National Identity Proofing Guidelines.



Proposed permit holders will need to verify their identity by obtaining a Digital ID from Australia Post – a fast and easy process at Australia Post outlets across the country.

At a time and location that suits the proposed permit holder, they will then participate in a Skype video call with a staff member at the Commission to enable visual verification of the photo on the entry permit card.

The Commission worked closely with registered organisations and their peak bodies to design the card and process for verifying identity, including piloting the new process with registered organisations.

Current permit holders can continue to use their existing permit until it expires. However, from 1 October 2019, they will be required to produce photographic identification along with their existing permit when entering premises.

Appeals of Commission decisions

A person who is aggrieved by a decision or order made by a Member or the General Manager can apply to appeal that decision or order. Appeals from a decision of the General Manager are heard by a single Member. All other appeals are heard by a Full Bench of the Commission, which is generally made up of three Members, one of whom is a Presidential Member.

The Full Bench will usually determine two issues: whether permission to appeal should be granted, and whether there was an error in the original decision. The Commission must grant permission to appeal if it is satisfied that it is in the public interest to do so (s.604(2) of the Fair Work Act).

The 'public interest' is not defined in the Act, but it generally refers to a benefit or advantage to the whole community as opposed to an individual. The task of assessing whether the public interest test is met is a discretionary one involving a broad value judgment. Some examples of considerations which have traditionally been adopted in granting leave include that the decision is attended with sufficient doubt to warrant its reconsideration, that the Commission may have exceeded its jurisdiction in the original decision, and that substantial injustice may result if leave is refused.

A higher standard applies to appeals from decisions in unfair dismissal matters (s.400 of the Fair Work Act). If the error that is alleged is an error of fact, then the appellant must persuade the Full Bench that it is a significant error of fact. Further, s.400(1) of the Fair Work Act provides that permission to appeal from an unfair dismissal decision must not be made unless the Commission considers that it is in the public interest to do so.

If permission to appeal is granted, and the appeal is upheld, a Full Bench may:

- confirm, quash or vary the decision
- make a further decision in relation to the matter that is the subject of the appeal
- refer the matter that is the subject of the appeal to a Member for further action.

Permission to appeal

The Commission's permission to appeal process applies to appeals for unfair dismissal matters and general protections consent arbitration cases.

Under the process, a Full Bench determines whether to grant permission to appeal as a threshold issue, so that parties do not incur the costs of preparing and filing submissions on the merits of an appeal that may not proceed.

When a matter is allocated to the process, all parties are informed that the question of permission to appeal will be determined as a threshold issue. The appellant must file a short, written submission in support of the permission application but does not need to file a lengthy submission addressing the merits of the appeal. The respondent is not required to file any written submissions in response.

In 2018–19, the Commission heard 87 applications for permission to appeal. Of these, 64 per cent were refused, as shown in Table 34.

Table 34: Appeals – permission to appeal outcomes

Outcome	No. of matters				Percentage of matters			
	2018–19	2017–18	2016–17	2015–16	2018–19	2017–18	2016–17	2015–16
Permission not granted	56	62	80	107	64	65	73	78
Permission granted	31	33	29	26	35	35	27	19
Total	87	95	109	137	99²	100	100	97¹

1 Four matters were still pending at the end of the 2015–16 reporting period. Of the 137 appeal applications made in 2015–16, 133 (97 per cent) were finalised in 2015–16.

2 One matter was still pending at the end of the 2018–19 reporting period.

Determination of appeals

In 2018–19, Full Benches of the Commission determined a total of 156 appeal matters (including permission to appeal matters), as shown in Table 35. This is an 8 per cent decrease from the total of 169 in 2017–18. The proportion of appeals upheld increased in 2018–19, to 40 per cent of finalised appeals from 36 per cent in 2017–18.

Just as unfair dismissal applications are the most common type of application lodged with the Commission, appeals of unfair dismissal decisions are the most common type of appeal. Unfair dismissals accounted for 45 per cent of all appeals finalised in 2018–19. Of the 70 unfair dismissal appeals heard in 2018–19 (including permission to appeal matters), 29 per cent were upheld. This is consistent with the previous reporting period when 30 per cent of unfair dismissal appeals were upheld but an increase compared with 2016–17 when only 15 per cent were upheld.

Appeals concerning the approval of enterprise agreements made up the second-largest number of matters, decreasing to 15 per cent of decisions in 2018–19 from 18 per cent in 2017–18. The third-largest number of matters was applications to deal with a dispute (under s.739) consistent with the previous year. Appeals of that type decreased to 13 per cent of decisions in 2018–19, from 14 per cent in 2017–18.

In 2018–19, of the decisions issued concerning agreement approvals, 67 per cent of appeals were upheld, compared with 65 per cent in 2017–18. Of the decisions concerning disputes, 52 per cent of appeals were upheld in 2018–19, an increase compared to 29 per cent in 2017–18.

Appeals of Commission decisions (cont.)

Table 35: Appeals – appeal outcomes

Matter type	No. upheld				No. dismissed				Total appeal decisions			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
Unfair dismissals	20	26	15	29	50	60	87	110	70	86	102	139
General protections	3	3	1	2	7	9	12	10	10	12	13	12
Agreement approvals	16	20	16	18	8	11	6	21	24	31	22	39
FWA s.739 disputes	11	7	14	14	10	17	16	29	21	24	30	43
Industrial action	4	2	3	6	1	0	1	2	5	2	4	8
Modern awards	0	0	0	0	0	0	0	0	0	0	0	0
Bargaining disputes	2	0	4	3	1	0	2	8	3	0	6	11
Right of entry	0	1	1	3	0	2	3	5	0	3	4	8
Anti-bullying	1	0	1	0	4	4	1	4	5	4	2	4
Miscellaneous	5	2	7	3	13	5	5	1	18	7	12	4
Total	62	61	62	78	94	108	133	190	156	169	195	268

FWA = Fair Work Act

Timeliness

The Commission has established performance benchmarks concerning timeframes for the hearing of appeals and handing down of reserved decisions in appeal matters.

Information about the Commission's performance against these benchmarks can be found on pages 24 to 25.

Judicial reviews

Parties who do not agree with the outcome of a matter heard and determined by the Commission may be able to seek a judicial review of the decision.

In 2018-19, the Federal Court of Australia and High Court of Australia determined 12 matters on review from the Commission, consistent with 2017-18, as shown in Table 36.

Table 36: Appeals – judicial review decisions

Outcome	No. of matters			
	2018-19	2017-18	2016-17	2015-16
Upheld	2	3	2	4
Dismissed	10	9	8	11
Total	12	12	10	15

Note: Results from previous years may change between reporting periods as matters are resolved at the different levels of the court hierarchy.

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3 Annual performance statements

- Introductory statement
- Entity purpose
- Performance framework



Introductory statement

I, Bernadette O'Neill, as the accountable authority of the Fair Work Commission, present the 2018–19 annual performance statements of the Fair Work Commission, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, these annual performance statements are based on properly maintained records, accurately present the performance of the entity in the reporting period and comply with subsection 39(2) of the PGPA Act.



Bernadette O'Neill
General Manager

26 September 2019

Entity purpose

As Australia's national workplace relations tribunal, the primary purpose of the Fair Work Commission (Commission) is to exercise its functions and powers in accordance with the *Fair Work Act 2009*, including:

- promoting cooperative and productive workplace relations
- resolving unfair dismissal claims
- resolving workplace bullying claims
- dealing with general protections claims
- setting the national minimum wage
- creating, reviewing and varying modern awards
- approving enterprise agreements
- assisting the bargaining process for enterprise agreements
- assisting with the prevention and resolution of industrial disputes
- determining applications for right of entry permits.

Performance framework

The Commission’s performance reporting framework is built around three core elements: portfolio budget statements (PBS), the corporate plan and annual performance statements.

The goals and performance measures set out in the framework in 2018–19 are shown in Table 37.

Table 37: Performance framework

Corporate plan	<p>Purpose</p> <p>As Australia’s national workplace relations tribunal, the primary purpose of the Fair Work Commission (Commission) is to exercise its functions and powers in accordance with the <i>Fair Work Act 2009</i>. (Source: 2018–19 Corporate Plan, p.4)</p>
Portfolio budget statements	<p>2018–19 Budget outcomes and programs</p> <p><i>Outcome 1:</i></p> <p>Simple, fair and flexible workplace relations for employees and employers through the exercise of powers to set and vary minimum wages and modern awards, facilitate collective bargaining, approve agreements and deal with disputes (Source: 2018–19 PBS, p.117)</p> <p><i>Program 1.1:</i></p> <p>Dispute resolution, minimum wage setting, orders and approval of agreements.</p> <p>The Fair Work Commission exercises powers under the <i>Fair Work Act 2009</i> in accordance with the objects of the Act and in a manner that is fair and just, is quick, informal and avoids unnecessary technicalities. (Source: 2018–19 PBS, p.118)</p>
Annual performance statements	<p>Intended results:</p> <ul style="list-style-type: none"> ● The community understands the role of the Commission and recognises it as an independent and expert workplace relations tribunal (Source: 2018–19 Corporate Plan, p.10) ● The Commission is accessible to all Australians, recognising the community’s diverse needs and expectations (Source: 2018–19 Corporate Plan, p.11) ● The Commission is efficient, accountable and transparent (Source: 2018–19 Corporate Plan, p.11) ● The Commission is a highly skilled and agile organisation in which its people, processes, systems and technology are aligned to deliver high-quality, efficient and effective services to the community (Source: 2018–19 Corporate Plan, p.12)

Performance framework (cont.)**Results**

The following results show the Commission's achievements in relation to the criteria and key performance indicators set out in the Fair Work Commission Corporate Plan 2018–19 (Corporate Plan) and the *2018–19 Portfolio Budget Statements, Budget Related Paper No. 1.13B Jobs and Innovation Portfolio* (PBS).

Activity One: Powers and functions are exercised in accordance with the Fair Work Act 2009

Intended result	The community understands the role of the Commission and recognises it as an independent and expert workplace relations tribunal
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Performance criterion	Target	Result
Survey 80 per cent of parties in individual matters following a staff conference or conciliation. (Source: Corporate Plan, p.10)	80%	100%

Results against performance criterion

The Commission surveyed 100 per cent of parties to individual matters following a staff conference or conciliation.

Performance criterion	Target	Result
At least 80 per cent of survey respondents in individual matters following a staff conference or conciliation are satisfied that their conference conciliator was even-handed. (Source: Corporate Plan, p.10)	80%	83%

Results against performance criterion

Survey responses exceeded the target, with 83 per cent of respondents being satisfied that their conciliator was even-handed.

Performance criterion	Target	Result
Report on the activities that involved consultation with users about improving service delivery. (Source: Corporate Plan, p.10)	Report on activities	Complete

Results against performance criterion

The Commission finalised one report on activities that involved user consultation:

- Unfair Dismissal Correspondence User Testing – available at www.fwc.gov.au

Intended result **The Commission is accessible to all Australians, recognising the community's diverse needs and expectations**

Performance criterion	Target	Result
At least 80 per cent of survey respondents in individual matters following a staff conference or conciliation found that information, including on the Commission's website, was easy to understand. (Source: Corporate Plan, p.11)	80%	83%

Results against performance criterion

Survey responses exceeded the target, with 83 per cent of respondents finding that information, including on the Commission's website, was easy to understand.

Performance criterion	Target	Result
At least 80 per cent of survey respondents in individual matters following a staff conference or conciliation are satisfied with the relevance of information provided by the Commission. (Source: Corporate Plan, p.11)	80%	91%

Results against performance criterion

Survey responses exceeded the target, with 91 per cent of respondents satisfied with the relevance of information provided by the Commission.

Performance criterion	Target	Result
At least 75 per cent of survey respondents in individual matters following a staff conference or conciliation are satisfied with information provided by the Commission about its processes. (Source: Corporate Plan, p.11)	75%	79%

Results against performance criterion

Survey responses met the target, with 79 per cent of respondents satisfied with information provided by the Commission about its processes.

Performance criterion	Target	Result
Monitor and report on the use of technology that has been implemented in order to improve access to, or delivery of, Commission services. (Source: Corporate Plan, p.11)	Report on activities	Complete

Results against performance criterion

The Commission monitored and reported internally on its implementation of technology in order to improve access to, or delivery of, its services.

Performance framework (cont.)

Intended result	The Commission is efficient, accountable and transparent
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Performance criterion	Target	Result
Improve or maintain the time elapsed from lodging applications to finalising conciliations in unfair dismissal applications with a target of 34 days. (Source: PBS, p.119, Corporate Plan, p.12)	34 days	32 days

Results against performance criterion

The Commission exceeded the target of 34 days, with conciliations in unfair dismissal applications being conducted in a median of 32 days from lodgment. In 2018–19, 13,928 unfair dismissal applications were lodged, and Commission staff conducted 10,408 conciliation conferences. This was five days longer than our performance in 2017–18, when unfair dismissal conciliation conferences were conducted in a median of 27 days from lodgment.

Further information about the Commission's performance in dealing with unfair dismissal cases is on pages 28 to 29 of the annual report.

Performance criterion	Target	Result
Annual wage review to be completed to enable operative date of 1 July with a target of publication no later than 30 June. (Source: PBS, p.119, Corporate Plan, p.12)	Publication by 30 June 2019	30 May 2019

Results against performance criterion

The Commission completed the annual wage review on 30 May 2019.

Further information on the annual wage review is on pages 58 to 59 of the annual report and in Table D13 in Appendix D, which sets out the Commission's timeliness in meeting the target.

Performance criterion	Target	Result
Improve or maintain the agreement approval time for agreements approved without undertakings with a target of 32 days. (Source: PBS, p.119, Corporate Plan, p.12)	32 days	30 days

Results against performance criterion

The Commission exceeded the target of 32 days, with agreements without undertakings being approved in a median of 30 days from lodgment.

Further information about the Commission's timeliness in approving enterprise agreements is on pages 71 to 74 of the annual report.

Activity Two: Organisational capability is enhanced

Intended result

The Commission is a highly skilled and agile organisation in which its people, processes, systems and technology are aligned to deliver high quality, efficient and effective services to the community

Performance criterion	Target	Result
90 per cent of performance and development plans specify individual and/or organisational development goals. (Source: Corporate Plan, p.12)	90%	100%

Results against performance criterion

As a part of our employee performance management framework, employees develop an annual performance and development plan in consultation with their managers.

In 2018-19, 100 per cent of performance and development plans specified individual and/or organisational development goals.

Performance criterion	Target	Result
At least 30 per cent of staff are offered an opportunity to experience work outside their usual role, participate in a cross-organisational project or be involved in a service improvement project. (Source: Corporate Plan, p.12)	30%	35%

Results against performance criterion

In 2018-19, 35 per cent of staff experienced work outside their usual role, participated in a cross-organisational project or were involved in a service improvement project.

Performance framework (cont.)

Analysis of performance against the Commission's purposes

Activity One

In 2018–19, the Commission performed strongly against its performance criteria in achieving its purpose as set out in the corporate plan. There was a slight decrease in survey respondents' satisfaction that their conference conciliator was even-handed. While 3 per cent fewer survey respondents found that information (including on the Commission's website) was easy to understand, more respondents were satisfied with the relevance of information provided by the Commission and with the information provided around our processes.

This shows that, while we are generally providing the right information to parties to individual matters at the right time, there is work to do in making information easier to understand. As well as redrafting correspondence to parties in unfair dismissal matters in plain language (see pages 29 to 31), the Commission is currently redrafting its unfair dismissal website content, including guides and fact sheets, in plain language.

The Commission's performance in conducting conciliations in unfair dismissal cases declined from the previous reporting period, with conferences conducted in a median of 32 days, compared with 27 days in 2017–18 but still ahead of the 34-day target. As the most common application lodged each year, we will continue to focus on resourcing both conciliators and administrative support to deal with unfair dismissal applications.

Once again, the Commission delivered the decision in the annual wage review with ample time to enable an operative date of 1 July 2019.

As discussed on page 71, the Commission changed the KPI for approval of enterprise agreements to refer to agreements without undertakings. The Commission met the KPI in 2018–19 with a result of 30 days against the target of 32 days. More detailed information about the actions taken to improve agreement approval timeliness can be found on pages 71 to 74.

The Commission regularly reports on the activities that involve consultation with our users about improving service delivery. During 2018–19, the Commission consulted with a range of user groups, including the Termination of Employment User Group and the New Approaches User Group. The Commission also established two new user groups – one to provide feedback on agreements, with which the Commission tested the new online application forms (see page 74), and the Small Business Reference Group, which provides a forum for small businesses to assist the Commission in continuing to improve its services.

During 2018–19, the Commission engaged Pivot Consulting to undertake user testing of the unfair dismissal letters redrafted in plain language. Participants were applicants and small business respondents who had previously had an unfair dismissal case at the Commission. The Commission has incorporated much of the feedback into the letters and will use the research to inform the redrafting of content on the Commission’s website. The report will be published in the second half of 2019.

Activity Two

To help enhance organisational capability, the Commission has an agile operating model that builds staff mobility and enhances capability. The opportunity for staff to experience work outside their usual role builds an adaptable workforce that can easily respond to changes in resourcing and priorities. It permits staff to have a strong understanding of all parts of the Commission, which in turn contributes to better service delivery for users.

In 2018–19, over a third of the Commission’s staff had the opportunity to expand their skills and take on new challenges by working in, or with, other parts of the agency. Significant numbers of staff were consulted about, or participated in, the implementation of the Commission’s new case management system, which will launch in the 2019–20 financial year. Many others had the opportunity to take part in cross-organisational initiatives such as the diversity working group, and service improvement projects such as the development of new online forms to decrease errors in agreement applications. Opportunities such as these encourage innovation, collaboration and service excellence.

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4 Management and accountability

- Corporate governance
- External scrutiny
- Service charter
- Management of human resources
- Financial management
- Mandatory information



Corporate governance

The Commission's corporate governance framework promotes the principles of good governance and encourages all staff to be accountable for their actions and to focus on their performance. The framework upholds the Australian Public Service (APS) Values and Code of Conduct.

The framework supports the General Manager in meeting her responsibilities for the Commission's performance, financial management and compliance with the PGPA Act and the Public Service Act.

Governance bodies

The Executive is the key decision-making body with strategic oversight of the Commission's administration and resourcing. It comprises the General Manager and four Executive Directors and meets fortnightly. More information about the branches and Executive Directors is in the Overview. The Executive is supported by the Audit Committee and Major Projects Control Committee as set out in Table 38.

Table 38: Governance bodies, 2018–19

Body	Function
Audit Committee	<p>The Audit Committee provides independent assurance to the General Manager on the Commission's financial and performance reporting, risk oversight and management, systems of internal control and internal audit program.</p> <p>The General Manager appoints Audit Committee members. Three of the four committee members (including the Chair) are independent, satisfying the requirement that a majority of committee members not be Commission officials.</p> <p>Representatives from the Australian National Audit Office are invited to attend each meeting as observers.</p> <p>The Audit Committee meets quarterly.</p>
Major Projects Control Committee	<p>The Major Projects Control Committee is responsible for high-level strategic governance of major organisational and capital expenditure projects. The committee comprises the Executive and senior managers and meets monthly.</p>

Fraud management

The Commission has a fraud control plan and conducts fraud risk assessments annually and when there is a substantial change in the Commission's structure, functions or activities. The fraud control plan and fraud risk assessments establish mechanisms for preventing, detecting, investigating and reporting on fraud and suspected fraud within the Commission.

There were no known instances of fraud committed against the Commission in the 2018–19 financial year.

Fraud control certification

In accordance with s.10 of the Public Governance, Performance and Accountability Rule 2014, I hereby certify that I am satisfied that the Fair Work Commission:

- has prepared fraud risk assessments and fraud control plans
- has in place appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the Commission
- has taken all reasonable measures to appropriately deal with fraud relating to the Commission.



Bernadette O'Neill
General Manager

26 September 2019

Risk management

In 2018–19, the Commission continued to embed a contemporary risk management culture and practices across the organisation, in line with the risk management framework introduced by the PGPA Act.

As part of its risk management strategy, the Commission develops an annual internal audit program. The program, developed in consultation with the Executive and endorsed by the Audit Committee, reflects the Commission's purpose and identified strategic and operational risks and relevant regulatory requirements. Audits can cover any of the Commission's financial and non-financial activities and performance, policies and procedures. Internal audit reports are provided to the General Manager and Executive and discussed at meetings of the Audit Committee.

In 2018–19, the Commission's internal auditors were RSM. The following internal audits were undertaken during the year:

- assurance review of project to build a new case management system
- cyber security
- information management and governance review – Part 2
- physical security (will be completed in 2019–20).

These audits presented opportunities for the Commission to update its policies and practices in a number of areas.

Corporate Governance (cont.)

Compliance with the finance law

The Commission made no reports of any significant issues that relate to non-compliance with the finance law as it relates to the Commission in 2018–19. Finance law incorporates the PGPA Act, including rules and instruments created under the PGPA Act, and Appropriation Acts.

Ethical standards

The Commission's ethical standards are governed by a legislative framework common to non-corporate Commonwealth entities, including the PGPA Act, Public Service Act, Australian Public Service Commissioner's Directions 2016 and Public Service Regulations 1999.

External scrutiny

The Auditor-General issued an unqualified independent audit report on the Commission's 2018–19 financial statements. There were no other reports issued by the Auditor-General relating to the Commission in 2018–19.

There were no judicial decisions, decisions of administrative tribunals or decisions of the Australian Information Commissioner in 2018–19 that had, or may have had, a significant effect on the operation of the Commission. There were no reports on the operation of the Commission by a parliamentary committee or by the Commonwealth Ombudsman in 2018–19 and no agency capability reviews were released during the period.

Service charter

The Commission's service charter outlines the nature and level of service the public can expect from Commission staff. You can read the service charter at www.fwc.gov.au.

The website provides information on how to make a complaint or provide feedback on the Commission's administrative activities. The Commission relies on feedback and complaints to identify service problems and potential improvements, while recognising that each year a number of complaints involve issues that are outside the jurisdiction or authority of the Commission's administration.

The Commission has a separate process for dealing with complaints about Members, in accordance with the Fair Work Act. There is information about complaints about Members at www.fwc.gov.au.

During 2018–19 the Commission received 86 written complaints about our processes and practices. This is a decrease of 13 per cent from 99 complaints in 2017–18 and continues the downward trend in complaints received over the last four years.

The Commission aims to respond to written complaints within 20 working days. The Commission responded to written complaints within an average of 12 days in 2018–19, consistent with the previous year’s timeframe of 11 days.

The number of complaints about the Commission’s processes decreased by 5 per cent, to 23 in 2018–19 from 32 in 2017–18. A substantial number of those complaints involved issues that were outside the jurisdiction or authority of the Commission’s administration. Complaints received in relation to staff conciliations were consistent with the previous year and remained lower than in 2016–17 and 2015–16.

Table 39 provides a breakdown of the categories and numbers of written complaints received.

Table 39: Complaints

Subject	2018–19	2017–18	2016–17	2015–16
Member conduct	7	6	4	8
Staff conciliation ¹	25	22	35	30
Outcome of a matter ²	2	5	7	6
Timeliness	0	0	1	4
Administration ³	8	15	17	20
Pay and entitlements	0	0	0	0
Complaint relating to modern awards or enterprise agreements ⁴	4	5	1	12
Adjournment request refusal	3	3	0	4
Process ⁵	23	32	37	45
Other	14	11	3	15
Total	86	99	105	144

1 ‘Staff conciliation’ supersedes the previous classification of ‘unfair dismissal conciliation’. Staff conciliations will now include all conciliation processes and conciliator conduct.

2 Complaints relating to the outcome of a matter include decisions of the Commission. These matters generally cannot be dealt with through the complaints process and usually require a formal appeal of the decision to be lodged.

3 ‘Administration’ includes administrative errors, staff conduct, and errors with the website and lodgment system.

4 Complaints relating to the content of modern awards or enterprise agreements usually cannot be resolved through the complaints process and usually require a formal application to be lodged to amend or vary these instruments.

5 ‘Process’ relates to either dissatisfaction with one of the Commission’s processes or a fundamental misunderstanding of the process or the authority of the Commission.

Management of human resources

Each year the Australian Public Service Employee Census gives insights into staff perceptions of working at the Commission. Results from the May 2019 census show that the Fair Work Commission has a staff engagement score three per cent above the APS average, with other measures such as employee wellbeing and innovation reducing slightly from prior year results.

Training and development

The Commission invests in a number of initiatives to give our employees the skills and experience to deliver our services.

Each year, we identify areas for training and development, to continue to meet our legislative requirements and to enhance our ability to deliver services. In 2018–19, mandatory training focused on privacy training, keeping the knowledge and building resilience.

Learning opportunities for staff include e-learning modules, support for formal study, short courses, attendance at conferences, and coaching and mentoring.

In the May 2019 Australian Public Service Employee Census, 80 per cent of respondents felt their workgroup had the appropriate skills, capabilities and knowledge to do their job. This is four per cent above the APS average.

Recruitment and separations

During 2018–19, 81 new employees (ongoing or non-ongoing) commenced employment and 68 employees (ongoing or non-ongoing) departed the Commission.

Conditions of employment

Collective and individual agreements

All employees, except Senior Executive Service (SES) employees, are covered by the Fair Work Commission Enterprise Agreement 2017–2020. The agreement commenced on 4 October 2017 and has a nominal expiry date of 4 October 2020.

At 30 June 2019, 306 employees were covered by the agreement. Three of those employees were also covered by individual flexibility arrangements.

At 30 June 2019, the Commission had three SES Band 1 employees. Employment conditions for SES employees are set out in individual determinations made by the General Manager under s.24(1) of the Public Service Act. The determinations are comprehensive documents covering each SES employee's terms and conditions, with many conditions aligned with those in the enterprise agreement.

Flexible work

The Commission provides flexible working arrangements to help employees balance work and other responsibilities, including:

- flextime – the majority of employees have access to flextime arrangements allowing them to ‘bank’ time worked in excess of standard full-time, or agreed part-time, hours (banked time can subsequently be taken as leave)
- part-time work – at 30 June 2019, 39 employees worked part time
- home-based work – at 30 June 2019, 10 ongoing employees had a home-based work agreement to combine ongoing work commitments with caring responsibilities and/or personal circumstances
- purchased leave – in 2018–19, 16 employees purchased additional leave
- job sharing – during 2018–19, four employees participated in job sharing arrangements.

In the May 2019 Australian Public Service Employee Census, 78 per cent of respondents were satisfied with the work–life balance of their current job and 65 per cent of staff felt that their supervisor actively supports the use of flexible work arrangements by all staff, regardless of gender.

Non-salary benefits

Non-salary benefits are available to employees through the agreement, individual arrangements and other initiatives. They include:

- time off instead of payment for overtime worked for the majority of employees
- where available through the local metropolitan public transport authority, access to annual train, tram and bus tickets – the Commission pays the up-front cost of a ticket and the employee repays the cost over 12 months
- healthy lifestyle initiatives such as partial reimbursement of the cost of spectacles, subsidised yoga and pilates classes, annual influenza vaccinations and an employee assistance program.

Statistics

At 30 June 2019, the Commission employed 309 staff (238 ongoing and 71 non-ongoing). This does not include Commission Members and is an increase of 12 from the total headcount of ongoing and non-ongoing staff at 30 June 2018. The Commission did not have any casual employees at 30 June 2019. No Commission employees identified as indeterminate sex at 30 June 2019. The Commission does not have staff overseas.

Tables 40 to 53 provide detailed staffing statistics for the past two reporting periods.

Management of human resources (cont.)**Table 40: Details of accountable authority during the reporting period**

Name	Position title/position held	Period as the accountable authority or member	
		Date of commencement	Date of cessation
Bernadette O'Neill	General Manager	1/07/2018	30/06/2019

Table 41: All ongoing employees current reporting period (2018–19)

	Male			Female			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	10	0	10	24	2	26	36
Qld	5	2	7	6	1	7	14
SA	5	0	5	5	0	5	10
Tas	0	0	0	1	1	2	2
Vic	54	4	58	75	26	101	159
WA	0	0	0	8	1	9	9
ACT	2	0	2	3	0	3	5
NT	0	0	0	3	0	3	3
Total	76	6	82	125	31	156	238

Table 42: All non-ongoing employees current reporting period (2018–19)

	Male			Female			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	5	0	5	7	0	7	12
Qld	5	0	5	5	0	5	10
SA	1	0	1	3	0	3	4
Tas	0	0	0	1	0	1	1
Vic	10	1	11	25	1	26	37
WA	2	0	2	2	0	2	4
ACT	1	0	1	2	0	2	3
NT	0	0	0	0	0	0	0
Total	24	1	25	45	1	46	71

Table 43: All ongoing employees previous reporting period (2017-18)

	Male			Female			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	10	0	10	21	3	24	34
Qld	4	0	4	8	2	10	14
SA	3	0	3	2	1	3	6
Tas	0	0	0	1	2	3	3
Vic	56	3	59	76	24	100	159
WA	1	0	1	7	2	9	10
ACT	2	0	2	5	0	5	7
NT	0	0	0	2	0	2	2
Total	76	3	79	122	34	156	235

Table 44: All non-ongoing employees previous reporting period (2017-18)

	Male			Female			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	5	0	5	7	0	7	12
Qld	3	0	3	2	0	2	5
SA	0	0	0	4	0	4	4
Tas	0	0	0	0	0	0	0
Vic	11	2	13	24	1	25	38
WA	1	0	1	1	0	1	2
ACT	0	0	0	1	0	1	1
NT	0	0	0	0	0	0	0
Total	20	2	22	39	1	40	62

Management of human resources (cont.)

Table 45: APS ongoing employees current reporting period (2018–19)

	Male			Female			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 1	1	0	1	1	0	1	2
EL 2	11	3	14	12	2	14	28
EL 1	11	1	12	13	7	20	32
APS 6	22	1	23	37	15	52	75
APS 5	13	0	13	34	3	37	50
APS 4	16	1	17	26	3	29	46
APS 3	0	0	0	1	0	1	1
APS 2	2	0	2	1	1	2	4
APS 1	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
Total	76	6	82	125	31	156	238

Table 46: APS non-ongoing employees current reporting period (2018–19)

	Male			Female			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 1	0	0	0	0	0	0	0
EL 2	0	0	0	1	0	1	1
EL 1	1	0	1	0	0	0	1
APS 6	0	0	0	0	0	0	0
APS 5	17	1	18	27	0	27	45
APS 4	6	0	6	16	1	17	23
APS 3	0	0	0	0	0	0	0
APS 2	0	0	0	1	0	1	1
APS 1	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
Total	24	1	25	45	1	46	71

Table 47: APS ongoing employees previous reporting period (2017-18)

	Male			Female			Total
	Full-time	Part Time	Total Male	Full-time	Part Time	Total Female	
SES 1	1	0	1	2	0	2	3
EL 2	14	2	16	12	5	17	33
EL 1	10	0	10	13	7	20	30
APS 6	23	1	24	40	18	58	82
APS 5	8	0	8	28	2	30	38
APS 4	18	0	18	23	2	25	43
APS 3	0	0	0	1	0	1	1
APS 2	2	0	2	2	0	2	4
APS 1	0	0	0	0	0	0	0
Other	0	0	0	1	0	1	1
Total	76	3	79	122	34	156	235

Table 48: APS non-ongoing employees previous reporting period (2017-18)

	Male			Female			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 1	0	0	0	0	0	0	0
EL 2	0	0	0	0	0	0	0
EL 1	1	0	1	0	0	0	1
APS 6	0	0	0	1	0	1	1
APS 5	13	0	13	27	0	27	40
APS 4	4	1	5	10	1	11	16
APS 3	2	1	3	1	0	1	4
APS 2	0	0	0	0	0	0	0
APS 1	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
Total	20	2	22	39	1	40	62

Management of human resources (cont.)

Table 49: APS employees by full-time and part-time status current reporting period (2018–19)

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total non-ongoing	Full-time	Part-time	Total non-ongoing	
SES 1	2	0	2	0	0	0	2
EL 2	23	5	28	1	0	1	29
EL 1	24	8	32	1	0	1	33
APS 6	59	16	75	0	0	0	75
APS 5	47	3	50	44	1	45	95
APS 4	42	4	46	22	1	23	69
APS 3	1	0	1	0	0	0	1
APS 2	3	1	4	1	0	1	5
APS 1	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
Total	201	37	238	69	2	71	309

Table 50: APS employees by full-time and part-time status previous reporting period (2017–18)

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total non-ongoing	Full-time	Part-time	Total non-ongoing	
SES 1	3	0	3	0	0	0	3
EL 2	26	7	33	0	0	0	33
EL 1	23	7	30	1	0	1	31
APS 6	63	19	82	1	0	1	83
APS 5	36	2	38	40	0	40	78
APS 4	41	2	43	14	2	16	59
APS 3	1	0	1	3	1	4	5
APS 2	4	0	4	0	0	0	4
APS 1	0	0	0	0	0	0	0
Other	1	0	1	0	0	0	1
Total	198	37	235	59	3	62	297

Table 51: APS employment type by location current reporting period (2018–19)

	Ongoing	Non-ongoing	Total
NSW	36	12	48
Qld	14	10	24
SA	10	4	14
Tas	2	1	3
Vic	159	37	196
WA	9	4	13
ACT	5	3	8
NT	3	0	3
Total	238	71	309

Table 52: APS employment type by location previous reporting period (2017–18)

	Ongoing	Non-ongoing	Total
NSW	34	12	46
Qld	14	5	19
SA	6	4	10
Tas	3	0	3
Vic	159	38	197
WA	10	2	12
ACT	7	1	8
NT	2	0	2
Total	235	62	297

Table 53: APS Indigenous employment current reporting period (2018–19)

	Total
Ongoing	–
Non-ongoing	1
Total	1

The Commission did not have any Indigenous staff in 2017–18.

Management of human resources (cont.)**Remuneration**

Tables 54 and 55 provide information about remuneration for key management personnel, senior executives and other highly paid staff. The General Manager determines salaries for SES employees and other highly paid staff. Employment conditions for SES employees are set out in individual determinations made under s.24(1) of the Public Service Act.

Other highly paid staff are remunerated under the enterprise agreement with an individual flexibility arrangement, which provides additional remuneration benefits. The General Manager determines the level of additional remuneration based on the quality of professional service provided by the employee and external market conditions.

The Commission did not have any other highly paid staff during the 2018–19 year that were remunerated above the \$220,000 disclosure threshold.

SES employees and other highly paid staff do not receive incentive payments or bonuses. Remuneration increases for SES employees is commensurate with increases provided to employees under the enterprise agreement.

The General Manager is an independent statutory office holder whose remuneration arrangements are determined by the Remuneration Tribunal.

Table 56 shows salary ranges for APS employees. Except for SES Band 1 employees, the specified ranges are taken from the enterprise agreement.

Table 54: Information about remuneration for key management personnel

Name	Position title	Short-term benefits			Post-employment benefits		Other long-term benefits	Term-innovation benefits	Total remuneration
		Base salary	Bonuses	allowances	Other benefits and annuities	Super-annuation contributions			
Bernadette O'Neill	General Manager	375,395	-	-	25,000	9,699	-	-	410,095
Ailsa Carruthers	Executive Director – Corporate Services	227,452	-	-	34,651	5,476	-	-	267,580
Louise Clarke	Executive Director – Client Service	98,277	-	-	14,214	2,302	-	94,776	209,570
Murray Furlong	Executive Director – Tribunal Services	226,007	-	-	33,597	5,409	-	-	265,013
Catherine Tinney	Executive Director – Client Service	39,561	-	-	13,630	9,911	-	-	63,102
Lisa Byrnes	Executive Director – Corporate Services	55,800	-	-	4,738	1,177	-	-	61,715
Jennifer Anderson	Executive Director – Client Service	65,372	-	-	6,745	1,537	-	-	73,654

Note: The Commission has completed an assessment of staff included in the key management personnel. Where the employee was in an acting arrangement for a period of less than 3 months, they have not been included in the table.

Management of human resources (cont.)

Table 55: Information about remuneration for senior executives

Total remuneration bands	Number of senior executives	Short-term benefits		Post-employment benefits		Other long-term benefits	Termination benefits	Total remuneration
		Average base salary	Average bonuses	Average other benefits and allowances	Average super-annuation contributions			
		Average base salary	Average bonuses	Average other benefits and allowances	Average super-annuation contributions	Average long service leave	Average other long-term benefits	Average total remuneration
\$0-\$220,000	4	64,753	-	-	9,832	3,732	-	23,694
\$245,001-\$270,000	2	226,730	-	-	34,124	5,443	-	266,296
\$395,001-\$420,000	1	375,396	-	-	25,000	-	-	410,095

Table 56: APS employment salary ranges by classification level current reporting period (2018-19)

	Minimum salary	Maximum salary
SES ¹	-	230,000
EL 2	119,577	144,171
EL 1	103,709	115,623
APS 6	81,467	96,542
APS 5	75,220	82,126
APS 4	67,473	75,433
APS 3	60,601	67,323
APS 2	53,853	60,759
APS 1	47,481	50,847

1 The General Manager determines the salaries of SES employees.

Note: The figures reflect base salary only and exclude superannuation and other benefits.

Performance pay

The Commission does not provide performance pay.

Work health and safety

Information about work health and safety at the Commission is provided in Appendix G.

Financial management

Asset management

The Commission's main asset types are leasehold improvements, computer equipment and computer software. As asset management is not considered to be a significant aspect of the Commission's strategic business, the effectiveness of the Commission's asset management processes is not reported.

Purchasing

The Commission's approach to procuring goods and services, including consultancies, is consistent with, and reflects the principles of, the Commonwealth Procurement Rules. The rules are applied to activities through the accountable authority instructions, supporting operational guidelines and the Commission's procurement framework.

Consultants

The Commission engages external consultants where the necessary specialised or professional skills are unavailable within the Commission or where there is a need for independent research or assessment.

The Commission's practices on the selection and engagement of consultants are in accordance with the PGPA Act and related Regulations, including the Commonwealth Procurement Rules and relevant internal policies. The methods of selection used for consultancies include open tender, select tender, direct sourcing and panel arrangements (initially selected through either an open tender or select tender process).

During 2018–19, one new consultancy contract was entered into involving total actual expenditure of \$12,375. In addition, one ongoing consultancy contract was active during the period, involving total actual expenditure of \$63,943.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website at www.tenders.gov.au.

Australian National Audit Office access clauses

No contracts of \$100,000 or more (including GST) were let during 2018–19 that did not provide for the Auditor-General to have access to the contractor's premises.

Exempt contracts

No contracts in excess of \$10,000 (including GST) or standing offers were exempted by the General Manager from being published on AusTender on the basis that they would disclose exempt matters under the *Freedom of Information Act 1982* (FOI Act).

Procurement initiatives to support small business

The Commission supports small business participation in the Commonwealth Government procurement market. Small and medium enterprises (SMEs) and small enterprise participation statistics are available on the Department of Finance's website.

The Commission's procurement practices support SMEs, including by the use of the Commonwealth Contracting Suite for low-risk procurements valued under \$200,000. The Commission communicates using clear, simple language that is presented in an accessible format throughout the procurement process.

The Commonwealth's Indigenous Procurement Policy, which commenced on 1 July 2015, is reflected in the Commission's procurement policy and practices.

Annual financial statements

The Commission is a non-corporate Commonwealth entity under the PGPA Act. The Commission's audited financial statements for 2018–19 are at Appendix E.

The Commission's operating revenue from government for the 2018–19 financial year was \$74.840 million. The Commission received own-source revenue of \$2.176 million, primarily represented by rental income.

Operating expenses increased in 2018–19 to \$84.158 million (\$82.521 million in 2017–18). The major expenses in 2018–19 were \$49.28 million in respect of employee expenses, \$29.193 million relating to supplier payment and \$5.623 million in asset depreciation, amortisation and related expenses.

In 2018–19, the Commission ran a funded deficit of \$1.519 million excluding depreciation and amortisation. The deficit is due to the impact of the movement of bond rates resulting in higher employee provision balances, and higher than anticipated remuneration costs.

Performance against budget and comparison to the 2017–18 year is presented for both departmental and administered activities in the primary financial statements included at Appendix E. Commentary is also provided in the financial statements explaining major variances to budget.

An entity resource statement, providing information about funding sources drawn upon by the Commission, and a summary of expenses and resources by income can be found in Tables F1 and F2 in Appendix F.

Mandatory information

Advertising and market research

During 2018–19, the Commission did not conduct any advertising campaigns.

Grants

The Commission did not award any grants during 2018–19.

Disability reporting mechanism

Since 1994, non-corporate Commonwealth entities have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's State of the Service reports and the *APS statistical bulletin*. These reports are available at www.apsc.gov.au. From 2010–11, entities have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010–2020, which sets out a 10-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high-level, two-yearly report will track progress against each of the six outcome areas of the strategy and present a picture of how people with disability are faring. The first of these progress reports was published in 2014 and can be found at www.dss.gov.au.

Information Publication Scheme

The Commission is subject to the FOI Act and is required to publish information to the public as part of the Information Publication Scheme (IPS). Under Part II of the FOI Act, the Commission must display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Commission's information publication plan is available at www.fwc.gov.au.

Remediation of information published in previous annual reports

Table D8, page 136, 2017–18 Annual Report

The equivalent number of weeks pay for 2017–18 was incorrect. The correct figure for equivalent number of weeks pay for 2017–18 is 7.

5 Appendices

- Appendix A: Members
- Appendix B: Regional allocation
- Appendix C: Members' activities
- Appendix D: Tables and figures reference data
- Appendix E: Annual financial statements
- Appendix F: Entity resources
- Appendix G: Other mandatory information
- Appendix H: List of requirements



Appendix A: Members

Table A1: Fair Work Commission Members at 30 June 2019

President

Justice IJK Ross AO (M)

Vice Presidents

Vice President A Hatcher (S)

Vice President J Catanzariti AM (S)

Deputy Presidents

Senior Deputy President JM Hamberger (S)

Deputy President RS Hamilton (M)

Deputy President PJ Sams AM (S)

Deputy President A Booth (S)

Deputy President IC Asbury (B)

Deputy President VP Gostencnik (M)

Deputy President J Kovacic (C)

Deputy President GE Bull (S)

Deputy President T Saunders (S/N)

Deputy President N Lake (B)

Deputy President A Mansini (M)

Deputy President M Binet (P)

Deputy President WR Clancy (M)

Deputy President LE Dean (S)

Deputy President PC Anderson (A)

Deputy President A Colman (M)

Deputy President I Masson (M)

Deputy President A Beaumont (P)

Deputy President A Millhouse (M)

Deputy President G Boyce (S)

Deputy President B Cross (S)

Deputy President J Young (M)

Commissioners

Commissioner PJ Spencer (B)

Commissioner BD Williams (P)

Commissioner DS McKenna (S)

Commissioner IW Cambridge (S)

Commissioner PJ Hampton (A)

Commissioner MP Bissett (M)

Commissioner CF Simpson (B)

Commissioner T Lee (M)

Commissioner S Booth (B)

Commissioner B Riordan (S)

Commissioner D Gregory (M)

Commissioner LAT Johns OAM (S)

Commissioner NP Wilson (M)

Commissioner T Cirkovic (M)

Commissioner C Platt (A)

Commissioner K Harper-Greenwell (M)

Commissioner J Hunt (B)

Commissioner SM McKinnon (M)

Commissioner L Yilmaz (M)

(A) = Adelaide, (B) = Brisbane, (C) = Canberra, (M) = Melbourne, (N) = Newcastle, (P) = Perth, (S) = Sydney

Table A2: Members of state tribunals who also held an appointment with the Commission, and members of expert panels, at 30 June 2019

Fair Work Commission title	State title/expert panel
Deputy President PD Hannon (A)	President, SAET
Deputy President DJ Barclay (H)	President, TIC
Professor S Richardson	Expert panel member
Mr A Apted	Expert panel member
Mr S Gibbs	Expert panel member

(A) = Adelaide, (H) = Hobart, SAET = South Australian Employment Tribunal, TIC = Tasmanian Industrial Commission

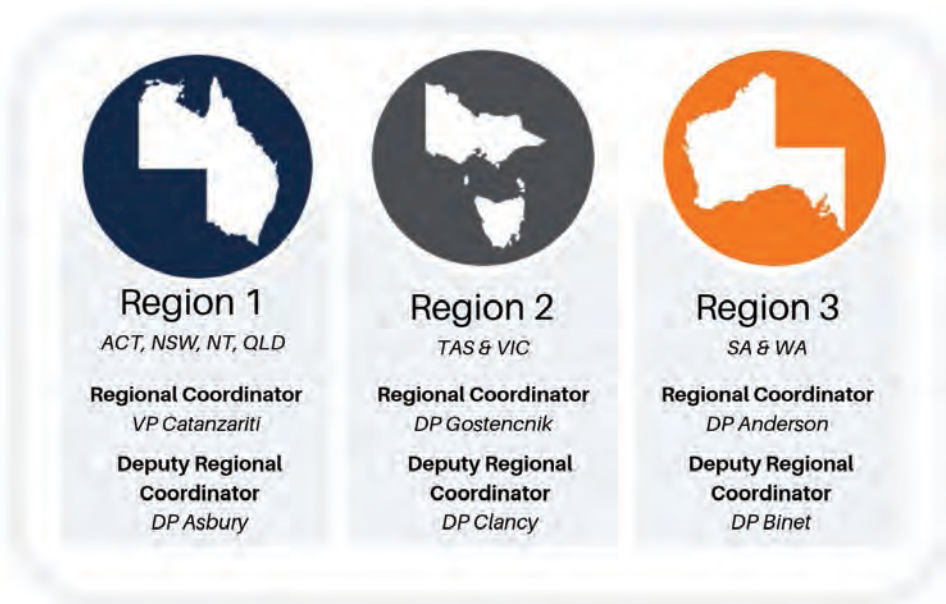
Appendix B: Regional allocation

On 1 April 2019, the regional allocation model commenced, replacing a model of allocating work to Members based on industry panels.

Regional coordinators and regions

The Commissions operates in three regions, covering each state and territory in Australia. Each region is led by a Regional Coordinator, and supported by a Deputy Regional Coordinator.

Figure B1: The three regions



National practice leaders

The Commission has eight national practice areas. These areas cover specialist case types and are overseen by a national practice leader. The practice leader has responsibility for allocating cases that fall within their practice area.

Table B1: National practice leaders

Case type	Role	Member
Unfair dismissals	Practice leader Deputy practice leader	Deputy President Clancy Commissioner Bissett
General protections	Practice leader	Deputy President Kovacic
Enterprise agreements	Practice leader	Commissioner Lee
Anti-bullying	Practice leader	Commissioner Hampton
New Approaches	Practice leader	Deputy President Booth
Major projects ¹	Practice leader	Vice President Catanzariti
Organisations	Practice leader	Senior Deputy President Hamberger
Commonwealth public sector	Practice leader	Vice President Catanzariti

¹ Generally, a major project is a project with a value of at least \$1 billion. However, projects of particular regional significance may be allocated to the practice area despite falling below the \$1 billion threshold.

Appendix C: Members' activities

Activities outside the Commission

A number of Commission Members hold appointments and positions in addition to their appointments to the Commission.

Justice Ross is a Judge of the Federal Court of Australia and an Adjunct Professor, Discipline of Work and Organisational Studies at the University of Sydney Business School.

Vice President Catanzariti is Chair of the College of Law Board of Directors; an Adjunct Associate Professor, Discipline of Work; Vice Chair of the LGBTI Committee of the International Bar Association and Organisational Studies at the University of Sydney Business School; and a Visiting Professorial Fellow of the School of Law and Faculty of Law, University of New South Wales (UNSW).

Senior Deputy President Hamberger is Vice President of the Committee of the Industrial Relations Society of New South Wales.

Deputy President Sams is Co-convenor of Advocacy in the Industrial Relations Tribunals course, run in conjunction with the University of Technology Sydney (UTS) Centre for Management and Organisation Studies and the Industrial Relations Society of New South Wales.

Deputy President Booth is a member of the Advisory Board to the Discipline of Work and Organisational Studies at the University of Sydney Business School.

Deputy President Asbury is the President of the Defence Force Remuneration Tribunal and the Chairperson of the Northern Territory Police Arbitral Tribunal.

Deputy President Binet is the Vice President of the Industrial Relations Society of Western Australia; Committee Member of the Royal Perth Hospital Ethics Committee; a Chartered Member of the Australian Human Resources Institute and a member of the Board of Theatre 180.

Deputy President Clancy served as the honorary Chairperson of the Frederick Richard O'Connell Scholarship Committee.

Deputy President Dean is a member of the Law Society of New South Wales and a member of the Resolution Institute and is Chairperson of the Alpine School.

Deputy President Anderson is a member of the Australian Labour and Employment Relations Association of South Australia.

Deputy President Beaumont is Chair of the Pharmaceutical Benefits Remuneration Tribunal; and a member of the National Judicial College of Australia, Australasian Institute of Judicial Administration Inc. and the UN Women NC Australia.

Deputy President Saunders is a committee member of the Industrial Relations Society of New South Wales (Newcastle branch); and a member of the Industry Advisory Committee, Employment Relations and Human Resource Management Disciplinary

Group, University of Newcastle; and a member of the Newcastle Law School Advisory Board, University of Newcastle.

Deputy President Boyce is a member of the Industrial Relations Society of New South Wales.

Commissioner Spencer is Chairperson of the Northern Territory Correctional Officers Arbitral Tribunal and Deputy Chairperson of the Northern Territory Police Arbitral Tribunal; and a Life Member of the Industrial Relations Society Queensland (IRSQ).

Commissioner Hampton is a member of the Australian Labour and Employment Relations Association; the Australian Labour and Employment Relations Association (South Australia); the Australian Labour Law Association; the Council of Australasian Tribunals (South Australia); the International Association on Workplace Bullying and Harassment; and Resolution Australia.

Commissioner Bissett is a conciliator to the Northern Territory Police Arbitral Tribunal.

Commissioner Lee is a member of the Tasmanian Industrial Commission; and on the Melbourne Law School Centre for Employment and Labour Relations Law Advisory Board.

Commissioner Johns was until May 2019 Chairman of the Australian Ballet School; and is Vice President of the Victorian College of the Arts Secondary School Council and Treasurer of the Industrial Relations Society of New South Wales (IRSNSW).

Commissioner Wilson is a member of the Tasmanian Industrial Commission.

Commissioner Cirkovic is a member of the Industrial Relations Society of Victoria; the Australian Association of Women Judges; and the Tasmanian Industrial Commission.

Commissioner Platt is a member of the Industrial Relations Society of South Australia.

Commissioner Harper-Greenwell is a member of the Industrial Relations Society of Victoria, and the International Association on Workplace Bullying and Harassment; and is a Professional Member of Resolution Australia.

Commissioner Hunt is a member of the Industrial Relations Society of Queensland.

Presentations and speaking engagements

Throughout the reporting period, Commission Members participated in a range of Commission-related domestic engagement, international engagement and professional development activities.

Justice Ross delivered a number of presentations during the reporting period. In September 2018, he presented at the Gender Pay Symposium, discussing what is meant by the gender pay gap and how it has moved over time. In October 2018, he attended the Australian Labour and Employment Relations Association conference, discussing the economic and social changes that are likely to impact the future of work and the

Appendix C: Members' activities (cont.)

workforce. The Council of Australasian Tribunals (COAT, Victorian Chapter) conference was held in November 2018 where Justice Ross presented on behavioural insights, and shared ideas about its application in the court and tribunal context. In February 2019, he presented at an Australian Chamber of Commerce and Industry event on 'Addressing the future and measuring what matters – global megatrends'. The COAT national conference was held in June 2019 and Justice Ross discussed behavioural economics and the potential to help tribunals become more efficient and to benefit the people who use our services.

Vice President Hatcher delivered two presentations during the reporting period and addressed the NSW Law Society in December 2018 and spoke at the Industrial Relations Society of NSW Conference in May 2019.

Vice President Catanzariti delivered the keynote address at the Legalwise Seminar Workplace Conference in September 2018 on recent changes and developments at the Commission. In February 2019 he delivered a presentation at the City of Sydney Law Society seminar on updates from the Commission. He also provided the opening remarks at the UNSW Centre for Continuing Legal Education – Employment Law seminar on updates from the Commission in March 2019. In June 2019, the Vice President delivered a presentation at an Australian Industry Group forum in Canberra on the topic Lightening the Load, as well as a presentation at the Australian Human Resources Institute Darwin State Conference on updates from the Commission.

Senior Deputy President Hamberger delivered keynote addresses at the Thomson Reuters Mental Health and Employment Law Conferences in October 2018 and in May 2019. He also presented on workplace conflict resolution to the Sydney Business School in March 2019 and Saint Vincent de Paul Society in April 2019. He also helped to facilitate workshops on enterprise bargaining in October 2018 and preventing and resolving bullying claims in June 2019 in conjunction with the Industrial Relations Society of NSW.

Deputy President Hamilton delivered opening remarks at an employment law seminar hosted by the UNSW Centre for Continuing Legal Education in July 2018. He delivered a paper entitled 'Practical aspects of the Fair Work Commission's jurisdiction and the Australian employment safety net' to the Australian Law Librarians Association's 9th Biennial Conference at the Gold Coast in November 2018.

Deputy President Sams delivered a briefing in October 2018 about workplace harassment to students at Macquarie University, and another to students from Notre Dame University about the role and powers of the Commission. In February 2019, he delivered advocacy training to Legal Aid NSW lawyers and presented updates from the Commission at the Konnect Learning conference. He delivered a CPD session to the NSW Young Lawyers Environmental and Planning Law Committee on practice management and the structure and operations of the Commission in March 2019. During the same month he gave a briefing on the role and functions of the Commission to Year 12 Business Studies students from Oxley High School. In May 2019, he gave a lecture at the UTS Business School in May 2019 about the role and powers of the Commission. The Deputy President is a regular guest lecturer in the University of Sydney and University of New South Wales.

Deputy President Booth spoke at the National Disability Service Purpose and People Network Meeting at International House, Melbourne University in July 2018. In September 2018, she addressed senior industrial relations and human resources managers from Downer Group at a dinner. In September 2018, she addressed a group of students from the Wentworth Institute and gave a briefing about the Commission to HR managers from Woolworths in October 2018. She also assisted in an unfair dismissal mock trial run by the University of Sydney Business School. She attended the Australian Labour and Employment Relations Association (ALERA) conference at the Barossa Valley in October 2018 and received an award 'In Recognition of Service to Employment Relations'. In November 2018, she hosted New Approaches workshops for employers and unions in Melbourne and Sydney. She also assisted in the combined Workplace Advisory Service and Macquarie University New Approaches Case Study video launch in during the same month. In February 2019, she delivered a presentation to Martin Hehir (Deputy Secretary of the then Department of Jobs and Small Business). Further presentations to other delegations of the Department of Jobs and Small Business occurred in March 2019 and May 2019. Deputy President Booth presented an Industrial Relations Society (IRS) Seminar at K&L Gates in February 2019. She assisted in the Capstone Case Study Development Workshop for the Discipline of Work and Organisational Studies at the University of Sydney Business School in April 2019 and addressed the FCB Group Breakfast Panel Discussion in May 2019. In June 2019, she co-facilitated, with Senior Deputy President Hamberger, a workshop on preventing and resolving bullying in conjunction with IRSNSW. She gave a presentation to administrative staff at Federal Court about the Commission in June 2019. In June 2019, the Deputy President presided over a mock trial for the Advocacy in Industrial Relations Tribunals course run by UTS.

Deputy President Asbury was the chair of a panel discussion of Fair Work Commission and Queensland Industrial Relations Commission Members at the Queensland Industrial Relations Society Conference in September 2018. In October 2018, she participated in a mock hearing of an unfair dismissal scenario facilitated by the Commission. She delivered a presentation to the Australian Labour Law Association about the evolving work of the Commission and the rise of individual versus collective disputes in November 2018. In May 2019, the Deputy President delivered a presentation and participated in a panel discussion on 'Overcoming the workplace bully at the Women in Design and Construction' event in Brisbane.

Deputy President Gostencnik conducted a series of moots with candidates for specialist accreditation as part of the Law Institute's Workplace Relations Specialist accreditation program in July 2018. In August 2018, he conducted an advocacy workshop for the Industrial Relations Society of Victoria as part of its advocacy training program. In March 2019, he presided over a mock arbitration hearing as part of an advocacy course run by the Australian Council of Trade Unions (ACTU). In the same month he gave a presentation on enterprise agreement making as part of the ACTU & VTHC CPD Conference. The Deputy President delivered an information session on advocacy before the Commission in May 2019, as a part of Law Week.

Appendix C: Members' activities (cont.)

Deputy President Kovacic delivered a keynote address at the Thomson Reuters Mental Health & Employment Law Conference in May 2019.

Deputy President Bull delivered a presentation to students about the role and powers of the Commission in March 2019.

Deputy President Binet spoke at the Women in Industrial Relations event hosted by Ashurst in September 2018. She presented at a DLA Piper seminar on the topic of enterprise bargaining in October 2018; and in November she spoke at the Industrial Relations Society of Western Australia State Convention about the gig economy. In January 2019, she delivered a presentation on Alternative Dispute Resolution in Workplace Relations to the Piddington Society. In May 2019, the Deputy President delivered a keynote address at the Thomson Reuters Mental Health & Employment Law Conference.

Deputy President Clancy gave a briefing to a Deakin University Law Clinic about the role of lawyers and the Commission in September 2018. In May 2019, he delivered an information session on making and responding to unfair dismissal applications as a part of Law Week.

Deputy President Anderson delivered a presentation on 'The International Labour Organisation's Global Work' to the Australian Labour and Employment Relations Association of South Australia in August 2018. In September 2018, he delivered a presentation to postgraduate students of Transnational Labour Law at Monash University on International Labour Relations. In October 2018, he presented a Fair Work Commission Mock Appeal Hearing to the National Conference of the Australian Labour and Employment Relations Association of Australia; and in May 2019 he gave a Commission Update presentation to an Industrial Relations Masterclass of the Australian Human Resources Institute (SA Branch).

Deputy President Beaumont assisted the Industrial Relations Society of WA in presiding over its moots for an industrial advocacy course in late 2018. In October 2018, she delivered a presentation to UnionsWA at its Industrial Officers and Lawyers Network Conference on the topic of modern awards and the 4 yearly review. In February 2019, she participated in a panel session discussion at Minter Ellison about the future of enterprise bargaining. She also delivered a presentation to the Chamber of Commerce and Industry WA Workplace Relations Conference in April 2019 about enterprise bargaining and presided over a mock unfair dismissal arbitration. The Deputy President also attended a three-day professional development course facilitated by the National Judicial College of Australia.

In May 2019, Deputy President Saunders gave a presentation to members and guests of the Industrial Relations Society of New South Wales (Newcastle branch) in relation to appearing in unfair dismissal proceedings in the Fair Work Commission.

Deputy President Boyce was a presenter at the Advocacy in the Industrial Relations Tribunals course, run in conjunction with the UTS Centre for Management and Organisation Studies and the Industrial Relations Society of NSW in June 2019.

Deputy President Cross briefed a group of Year 12 Economics students from Oxley High School about the Fair Work Commission in March 2019. He presided over a moot as part of the Advocacy in Industrial Relations Tribunals Course hosted by UTS and the Industrial Relations Society of NSW in June 2019.

Commissioner Spencer presented at the IRSQ – Advocacy Skills Course in January 2019. In April 2019, she provided an Employment relations update at LGIASuper. In May 2019, she presented at the HR: FCB Workplace law and the IRSQ Education Series. In June 2019, Commissioner Spencer presented at the Employee Relations Conference at Downer.

Commissioner Williams presided over an ACTU Mock Hearing in July 2018.

In August 2018, Commissioner Hampton presented at the Australasian Association of Workplace Investigators (Annual Conference, Kingscliff, NSW) 'What every investigator should know about the FWC's Anti-Bullying Jurisdiction'. The ALERA SA State Convention was held in October 2018 and he presented sessions on the Commission appeals process and the determinative conference process. In October 2018, he participated in an interview with the University of WA PhD students to give an oversight of the Commission's anti-bullying jurisdiction. The Commissioner was also a guest on HR Breakfast Club Podcast to discuss 'Responding to anti-bullying applications' in June 2019.

Commissioner Bissett gave a briefing about the role and powers of the Commission to Rail, Tram and Bus Union (RTBU) members taking part in the Anna Stewart Memorial Program in October 2018. In January 2019, she gave a briefing to law students from the Australian Catholic University as part of a JobWatch intensive course. The Commissioner delivered an information session on making and defending unfair dismissal applications in May 2019 as a part of Law Week.

Commissioner Simpson delivered a presentation about the line between employment and the private domain to Clubs Australia Industrial in August 2018. In March 2019, he delivered a presentation to members of the ER/IR Network Forum affiliated with the Australian Human Resources Institute (AHRI), on the subject of appearing at the Commission.

Commissioner Lee participated in a Skype interview in September 2018 with the NZ Employment Relations Authority as a part of the Barriers to Participation Symposium. He delivered keynote addresses at the Thomson Reuters Mental Health & Employment Law Conferences in October 2018 and April 2019. In March 2019, he delivered a presentation on enterprise agreements at the National Public Sector IR Directors Conference. As a part of Law Week he delivered an information session on making compliant agreement applications. The Commissioner also gave a presentation on common issues arising in applications to approve enterprise agreements to the Australian Public Service Commission in April 2019 and the Australian Nursing and Midwifery Federation's Industrial Committee in June 2019.

Appendix C: Members' activities (cont.)

Commissioner Booth delivered keynote addresses at the Thomson Reuters Mental Health & Employment Law Conferences in October 2018 and May 2019. She also gave a briefing to a group of HR managers from Woolworths in December 2018 about the role and powers of the Commission.

Commissioner Gregory gave a briefing about the role and powers of the Commission to interns from the RTBU in both July 2018 and February 2019. He also gave a presentation in October 2018 to representatives from migrant and refugee communities for the WEstjustice Train the Trainer program. In November 2018, he presented at the Australian Government Legal Network conference on the Commission's Access to Justice Programs – Workplace Advice Service, Out of Hours Pilot and General Protections Referral Service. In May 2019, he gave a briefing to Year 11 students from Timboon P12 School on the role and functions of the Commission. In June 2019, the Commissioner gave two sets of presentations to delegates from the Australian Manufacturing Workers Union (AMWU) on dispute resolution, and the role and processes of the Commission.

Commissioner Wilson delivered an information session on Advocacy before the Commission in May 2019 as a part of Law Week.

Commissioner Platt attended the National ALERA Conference in October 2018 and presented (in conjunction with DP Anderson and Commissioner Hampton) a practical session on the conduct of determinative conferences and appeals. In November 2018, the Commissioner attended the National Australian Law Librarians' Association Conference at the Gold Coast.

Commissioner Hunt delivered a presentation to the Queensland Hotels Association in August 2018 about trends and the state of law in relation to enterprise agreement approvals and terminations after the nominal expiry date. She gave a presentation to the Queensland Hotels Association in August 2018; was on a panel of FWC and Queensland Industrial Relations Commission members in September 2018 to the Industrial Relations Society of Queensland; spoke at a Downer Group function in October 2018; and in May 2019 delivered a presentation to the Minter Ellison Workplace Open Day.

Commissioner McKinnon delivered a briefing about the role and powers of the Commission to a group from the AMWU in July 2018; and to Health Science students from RMIT and to a group of HR managers from Woolworths, both in September 2018. She delivered an information session on making compliant agreement applications in May 2019 as a part of Law Week. In February 2019, she presented at the ACTU and the Victorian Trades Hall Council CPD conference 'The do's and don'ts of tribunal advocacy – appearing before and interacting with tribunal members and staff'. In May 2019, the Commissioner gave the same presentation in the Australian Industry Group Professional Development Series.

International engagement and professional development activities

Vice President Catanzariti met in July 2018 with a 12-person Vietnam Government delegation from the Ministry of Labour – Invalids and Social Affairs regarding the operation and work of the Commission and the social and policy impact assessments for new laws. In September 2018, Vice President Catanzariti met with a Deputy Chairman from the Labour Court of Ireland to discuss the role of the Fair Work Commission.

Deputy President Booth together with Commissioner McKenna met in November 2018 with a delegation of six officers from the All-China Women’s Federation. The purpose of the visit was to share Australian legislation and effective practice of workplace gender equality, and conflict resolution. The delegates were hosted by the Australian Human Rights Commission as part of the Australia–China Human Rights Technical Cooperation Program.

Deputy President Kovacic met with the Political Deputy Minister and other representatives of Taiwan’s Civil Service Protection and Training Commission in November 2018 to discuss the composition of the Commission, the Australian workplace relations system and the rights of Australian Public Service employees in accessing the services of the Commission. In November 2018, he met with the Deputy Chief Executive for the Labour, Science and Enterprise Group of the NZ Ministry of Business, Innovation and Employment to discuss the genesis and operation of the Commission, its current role and policy and operational context. In March 2019, Deputy President Kovacic met a three-person delegation headed by the Permanent Secretary from the Singapore Ministry of Manpower who were visiting Canberra for the Australia–Singapore Public Service Roundtable and wanted to learn more about the administration of Australia’s modern award system.

Deputy President Clancy met in November 2018 with a delegation of 12 senior government leaders of the Central Organizing Commission, Project 165, Vietnam to discuss the Commission’s jurisdiction. The visit was arranged by the RMIT College of Business as a part of its Public Administration and Public Policy training program.



Appendix D: Tables and figures reference data

Table D1: Unfair dismissal – conciliation outcomes

Outcome	2018-19	2017-18	2016-17	2015-16
Matters settled	8,161	8,285	8,880	8,529
Settlement – monetary items without reinstatement	1,469	1,404	1,660	1,712
Settlement – monetary and non-monetary items without reinstatement	5,137	5,171	5,511	5,122
Settlement – non-monetary items without reinstatement	1,500	1,650	1,627	1,624
Settlement – reinstatement	27	35	42	35
Settlement – reinstatement and monetary items	20	12	23	17
Settlement – reinstatement and non-monetary items	6	8	13	11
Settlement – reinstatement, monetary and non-monetary items	2	5	4	8
Matters not settled	2,247	2,206	2,280	2,321
Total	10,408	10,491	11,160	10,850

Appendix D: Tables and figures reference data (cont.)

Table D2: Unfair dismissal – conciliation outcomes, monetary payment

Range (\$)	No. of matters				Percentage of settlements involving monetary payment			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
0-999	427	510	553	539	6	8	8	8
1,000-1,999	942	935	1,002	922	14	14	14	13
2,000-3,999	1,761	1,683	1,893	1,866	27	26	26	27
4,000-5,999	1,274	1,206	1,344	1,288	19	18	19	19
6,000-7,999	708	760	790	717	11	12	11	10
8,000-9,999	431	418	474	447	7	6	7	7
10,000-14,999	637	606	643	608	10	9	9	9
15,000-19,999	231	219	251	236	3	3	3	3
20,000-29,999	140	168	163	153	2	3	2	2
30,000-39,999	39	48	49	57	<1	1	1	1
40,000-maximum amount ¹	37	39	32	26	<1	1	<1	<1
Total	6,627	6,592	7,194	6,859	100	100	100	100

1 A maximum of the monetary value of six months' salary by way of compensation is payable under the Fair Work Act. Note, however, that the monetary amount may include payment for other issues, such as unpaid entitlements.

Table D3: Unfair dismissal – conciliation matters, size of employer

Number of employees ¹	No. of matters				Percentage of conciliations			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
1-14	1,808	2,098	2,184	2,000	17	20	20	18
15-99	2,892	2,830	3,100	3,065	28	27	28	28
>100	5,010	5,008	5,307	5,204	48	48	48	48
Unknown	51	1	7	4	<1	<1	<1	<1
In dispute	647	554	563	577	6	5	5	5
Total	10,408	10,491	11,161	10,850	100	100	100	100

1 Based on information from respondents, where provided.

Table D4: Unfair dismissal – employer objections

Outcome	2018-19	2017-18	2016-17	2015-16
Employer's objection upheld	146	195	401	769
Employee was not dismissed	20	35	39	52
Employer not national system employer	2	1	5	8
Frivolous, vexatious	0	0	1	0
Genuine redundancy	11	14	22	49
Irregular and/or casual employee	3	1	4	0
Minimum period of employment not served	30	37	126	99
Multiple applications	1	0	2	0
No award, agreement or high-income employee	6	10	15	18
No employment relationship	8	5	7	13
No extension of time – up to and including 7 days late	24	26	61	153
No extension of time – more than 7 days late	40	54	115	342
No reasonable prospect of success	1	6	3	6
Termination consistent with Small Business Fair Dismissal Code	4	10	7	16
Unknown	0	4	5	24

Appendix D: Tables and figures reference data (cont.)**Table D4: Unfair dismissal – employer objections (cont.)**

Outcome	2018-19	2017-18	2016-17	2015-16
Employer's objection dismissed	61	73	114	265
Employee was dismissed	7	4	11	13
Application within time	10	16	21	30
Award, agreement and/or not high-income employee	5	7	7	13
Employment relationship	3	3	2	5
Extension of time – up to and including 7 days	8	16	25	106
Extension of time – more than 7 days	10	7	17	50
Minimum period of employment served	16	15	16	33
National system employer	0	0	1	0
No genuine redundancy	1	3	11	8
No multiple applications	0	0	0	0
Not frivolous, vexatious	0	0	0	2
Not irregular casual employee	4	5	4	3
Reasonable prospect of success	2	1	2	1
Termination inconsistent with Small Business Fair Dismissal Code	1	2	1	5
Unknown	1	2	6	6
Total	207	268	515	1,034

Note: An application may be found in or out of jurisdiction on more than one ground. Accordingly, the results may add up to more than the total.

Table D5: Unfair dismissal – applications dismissed under s.399A and s.587 of the Fair Work Act

Outcome	2018-19	2017-18	2016-17	2015-16
Dismissed (s.587)	169	155	112	125
Dismissed by panel head (s.587)	95	70	120	112
Failure to attend	2	0	1	1
Incomplete application	19	9	32	21
Minimum employment period not met	41	28	34	40
No notice of discontinuance filed after settlement	2	1	2	8
No reasonable prospect of success	14	23	17	12
Non-compliance with directions	1	0	3	3
Premature application	0	0	0	0
Unpaid application	37	35	56	42
Verbal or written advice of discontinuance	0	0	0	0
Application to dismiss granted (s.399A)	89	96	88	125
Total	353	321	320	362

Note: An application can have multiple reasons why it was dismissed by a panel head. Accordingly, the results are not cumulative. The Commission will determine the merits of an unfair dismissal application where it has not been resolved by the parties through conciliation (or otherwise withdrawn by the applicant) or dismissed by a Commission Member on jurisdictional or other grounds.

Table D6: Unfair dismissal – arbitration outcomes

Outcome	2018-19	2017-18	2016-17	2015-16
Application dismissed – dismissal was fair	89	104	125	130
Application granted – no remedy granted	11	7	6	7
Application granted – monetary	96	110	135	135
Application granted – reinstatement	4	6	10	12
Application granted – reinstatement and lost remuneration	9	17	15	18
Application granted – remedy to be determined	20	19	16	24
Total	229	263	307	326

Appendix D: Tables and figures reference data (cont.)**Table D7: Unfair dismissal – arbitration outcomes, application granted with compensation**

Result (\$)	2018-19	2017-18	2016-17	2015-16
0-999	3	8	2	5
1,000-1,999	6	5	12	10
2,000-3,999	13	17	27	18
4,000-5,999	12	15	20	16
6,000-7,999	9	17	12	14
8,000-9,999	6	13	9	11
10,000-14,999	13	9	14	21
15,000-19,999	10	8	17	13
20,000-29,999	7	6	13	15
30,000-39,999	4	3	4	6
40,000-maximum amount ¹	9	3	3	4
No loss of wages	0	0	0	0
Unknown ²	4	6	2	2
Total	96	110	135	135

1 A maximum of six months' compensation is payable under the Fair Work Act. Note, however, that the monetary amount may include payment for other issues, such as unpaid entitlements.

2 Unknown as administrative data is incomplete.

Table D8: Unfair dismissal – arbitration outcomes, median compensation

Median compensation	2018-19	2017-18	2016-17
Amount	\$8,704	\$6,971	\$7,196
Equivalent number of weeks' pay	8	7	8

Note: Median outcomes reflect the remedies ordered by the Commission, which are expressed as a dollar amount and as the equivalent number of weeks pay of the applicant. Data is only available from 2016-17 on.

Note: In the 2017-18 Annual Report we reported the equivalent number of weeks pay was 4.3. The correct figure is 7.

Table D9: Unfair dismissal – arbitration outcomes, application granted with reinstatement and lost remuneration

Result (\$)	2018-19	2017-18	2016-17	2015-16
0-999	0	0	0	0
1,000-1,999	0	0	0	0
2,000-3,999	0	0	0	2
4,000-5,999	1	2	0	1
6,000-7,999	1	0	1	2
8,000-9,999	0	0	1	1
10,000-14,999	0	7	2	0
15,000-19,999	1	0	2	2
20,000-29,999	2	0	1	1
30,000-39,999	0	2	0	2
40,000-maximum amount ¹	3	5	1	2
No loss of wages	1	1	2	2
Unknown ²	0	0	5	3
Total	9	17	15	18

1 A maximum of six months' compensation is payable under the Fair Work Act. Note, however, that the monetary amount may include payment for other issues, such as unpaid entitlements.

2 Unknown as administrative data is incomplete.

Appendix D: Tables and figures reference data (cont.)

Table D10: General protections disputes involving dismissal – conciliation outcomes involving monetary payment

Range (\$)	No. of matters				Percentage of settlements involving monetary payment			
	2018-19	2017-18	2016-17	2015-16	2018-19	2017-18	2016-17	2015-16
0-999	156	181	146	117	8	9	9	10
1,000-1,999	280	250	190	178	15	13	12	15
2,000-3,999	415	388	323	224	22	20	21	19
4,000-5,999	264	278	229	180	14	15	15	15
6,000-7,999	146	152	128	91	8	8	8	8
8,000-9,999	81	96	69	52	4	5	4	4
10,000-14,999	158	180	147	108	8	9	10	9
15,000-19,999	70	95	81	54	4	5	5	5
20,000-29,999	80	78	64	45	4	4	4	4
30,000-39,999	32	29	29	26	2	2	2	2
40,000-49,999	12	17	9	16	<1	1	1	1
50,000-59,999	11	18	5	7	<1	1	<1	<1
60,000-69,999	7	8	12	7	<1	<1	1	<1
70,000-79,999	7	5	7	6	<1	<1	<1	<1
80,000-89,999	5	2	8	4	<1	<1	1	0
90,000-99,999	2	2	1	6	<1	<1	<1	<1
100,000+	11	13	9	13	<1	1	1	1
Unknown	142	114	83	56	8	5	5	9
Total	1,879	1,906	1,540	1,190	100	100	100	100

Table D11: General protections disputes involving dismissal – lodgment of applications for consent arbitration

Matter type	2018-19	2017-18	2016-17	2015-16
FWA s.365 – General protections disputes involving dismissal – consent arbitration	14	18	23	18

FWA = Fair Work Act

Table D12: Anti-bullying – applications finalised by decision

Outcome	2018-19	2017-18	2016-17	2015-16
Matter finalised by administrative dismissal	62	34	41	28
Matter finalised at jurisdiction	3	3	6	3
Substantive application granted	2	8	3	12
Substantive application dismissed	7	8	10	14
Total	74	53	60	57

Table D13: Annual wage review – timeliness

Target	2018-19	2017-18	2016-17	2015-16
30 June	30 May 2019	1 June 2018	6 June 2017	31 May 2016

Table D14: Decisions and orders published

	2018-19	2017-18	2016-17	2015-16
Decisions and orders published	10,974	9,717	11,103	12,140

Appendix D: Tables and figures reference data (cont.)**Table D15: Hearings and conferences conducted by Members, by location or method**

Location or method	2018-19	2017-18	2016-17	2015-16
Adelaide	240	240	225	261
Brisbane	847	647	866	894
Canberra	105	101	120	117
Darwin	19	35	18	47
Hobart	86	58	47	70
Melbourne	1,797	1,989	2,080	2,228
Newcastle	117	93	137	95
Perth	427	522	618	683
Sydney	1,406	1,277	1,516	1,817
Wollongong	0	0	0	115
Other places	240	294	337	254
In chambers	2,894	2,316	5,543	5,662
Telephone	3,020	2,839	3,372	3,208
Video	504	785	925	1,232
Total	11,702	11,196	15,804	16,683

Table D16: Applications lodged, by matter type

Matter type	2018-19
Fair Work Act 2009	30,773
Rule 7 (FWC) – Directions on procedure	4
s.113(6) – Application for an order that terms of prior long service leave instrument are applicable	1
s.120 – Application to vary redundancy pay for other employment or incapacity to pay	294
s.122 – Transfer of employment situations that affect the obligation to pay redundancy pay	3
s.156 – 4 yearly review of modern awards	22
s.157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective	3
s.158 – Application to vary or revoke a modern award	3
s.160 – Application to vary a modern award to remove ambiguity or uncertainty or correct error	1
s.182(4) – Application for approval of a greenfields agreement	3
s.185 – Application for approval of a greenfields agreement	202
s.185 – Application for approval of a multi-enterprise agreement	36
s.185 – Application for approval of a single-enterprise agreement	4,694
s.210 – Application for approval of a variation of an enterprise agreement	188
s.217 – Application to vary an agreement to remove an ambiguity or uncertainty	23
s.217A – Application to deal with a dispute about variations	6
s.222 – Application for approval of a termination of an enterprise agreement	221
s.225 – Application for termination of an enterprise agreement after its nominal expiry date	263
s.229 – Application for a bargaining order	79
s.236 – Application for a majority support determination	111
s.238 – Application for a scope order	14
s.240 – Application to deal with a bargaining dispute	175
s.248 – Application for a single interest employer authorisation	10
s.260 – Application for consent low-paid workplace determination	1
s.266 – Industrial action related workplace determination	2
s.269 – Bargaining related workplace determination	1
s.285 – Annual wage review	1

Appendix D: Tables and figures reference data (cont.)**Table D16: Applications lodged, by matter type (cont.)**

Matter type	2018-19
s.302 – Application for an equal remuneration order	2
s.318 – Application for an order relating to instruments covering new employer and transferring employees	78
s.318 – Application for an order relating to instruments covering new employer and transferring employees in agreements	3
s.319 – Application for an order re instruments covering new employer and non-transferring employees in agreements	1
s.319 – Application for an order relating to instruments covering new employer and non-transferring employees	33
s.320 – Application to vary a transferable instrument – agreement	5
s.365 – Application to deal with contraventions involving dismissal	4,508
s.365 – Application to deal with contraventions involving dismissal (consent arbitration)	14
s.372 – Application to deal with other contravention disputes	1,005
s.394 – Application for unfair dismissal remedy	13,928
s.401 – Application for costs orders against lawyers and paid agents	2
s.418 – Application for an order that industrial action by employees or employers stop etc.	47
s.423 – Application to suspend or terminate protected industrial action – significant economic harm etc	1
s.424 – Application to suspend or terminate protected industrial action – endangering life etc.	9
s.425 – Application to suspend protected industrial action, cooling off	3
s.426 – Application to suspend protected industrial action, significant harm to a third party	1
s.437 – Application for a protected action ballot order	578
s.447 – Application for variation of protected action ballot order	15
s.448 – Application for revocation of protected action ballot order	33
s.459 – Application to extend the 30 day period in which industrial action is authorised by protected action ballot	150
s.472 – Application for an order relating to certain partial work bans	6
s.483AA – Application for an order to access non-member records	11
s.505 – Application to deal with a right of entry dispute	31
s.508 – Application to restrict rights if organisation or official has misused permit rights	2

Matter type	2018-19
s.510 – Upon referral, revoke or suspend an entry permit	3
s.512 – Application for a right of entry permit	1,242
s.516 – Application to extend entry permit	14
s.519 – Application for an exemption certificate	3
s.520 – Application for an affected member certificate	1
s.526 – Application to deal with a dispute involving stand down	10
s.533 – Application for an FWC order	3
s.576(2)(aa) – Promoting cooperative and productive workplace relations and preventing disputes	13
s.576(2)(ca) – Proceeding referred to FWC for mediation	11
s.589 – Application for procedural and interim decision	1
s.595 – Application to FWC to have a dispute resolution process conducted	1
s.602 – Application to correct obvious error(s) etc. in relation to FWC's decision	6
s.603 – Application to vary or revoke an FWC decision	3
s.604 – Appeal of decisions	175
s.605 – Minister may apply for review of a decision	2
s.608 – President may refer questions of law to the Federal Court	1
s.739 – Application to deal with a dispute	1,534
s.739 – Application to deal with a dispute in relation to flexible working arrangements	35
s.768AX – Application to vary copied State instruments	3
s.768BB – Application for an order about coverage for employee organisations under a state instrument	5
s.768BG – Application to consolidate orders in relation to non-transferring employees	1
s.773 – Application to deal with an unlawful termination dispute	127
s.773 – Application to deal with an unlawful termination dispute (consent arbitration)	1
s.789FC – Application for an order to stop bullying	751
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RO Act – Request for advice and assistance – FWC	72
s.13(1)(b) RO Act – Advice and assistance to Organisations	2
s.158(1) RO Act – Application for alteration of eligibility rules	10

Appendix D: Tables and figures reference data (cont.)**Table D16: Applications lodged, by matter type (cont.)**

Matter type	2018-19
s.158(1) RO Act – Application for change of name of organisation	3
s.158A RO Act – Application to GM for alteration of eligibility rules	1
s.159(1) RO Act – Notification of alterations of other rules	81
s.161 RO Act – Evidence of rules	3
s.180 RO Act – Conscientious objection to membership of organisations	9
s.246(1) RO Act – Application for determination of reporting units	1
s.26(6) RO Act – Application to issue a copy of or certificate replacing the certificate of registration	1
s.30(1)(a) RO Act – Application by organisation for cancellation of registration	1
s.30(1)(b) RO Act – Application for cancellation of registration of organisation	1
s.43(1) RO Act – Community of interest declaration	1
s.44(1) RO Act – Application for approval for submission of amalgamation to ballot	1
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	236
Sch. 3, Item 10 – Application to vary transitional instrument to remove ambiguity – agreement	1
Sch. 3, Item 15 – Application by agreement to terminate collective agreement-based transitional instrument	7
Sch. 3, Item 16 – Application to terminate collective agreement-based transitional instrument	60
Sch. 3, Item 17 – Application by agreement to terminate individual agreement-based transitional instrument	152
Sch. 3, Item 19 – Declaration for unilateral termination with FWC approval to terminate individual agreement	16
<i>Work Health and Safety Act 2011</i>	113
s.131 – Application for a work health and safety entry permit	113
<i>Coal Mining Industry (Long Service Leave) Administration Act 1992</i>	1
s.39D CMILSLA Act – FWC may deal with disputes relating to long service leave	1
Administrative	105
OH&S Review Authority	2
Request for a Board of Reference	103
Grand Total	31,415

FWC = Fair Work Commission, GM = General Manager

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Audited Financial Statements 2018–19



FINANCIAL STATEMENTS 2018 - 19

FAIR WORK COMMISSION



INDEPENDENT AUDITOR'S REPORT

To the Minister for Industrial Relations

Opinion

In my opinion, the financial statements of the Fair Work Commission ('the Entity') for the year ended 30 June 2019:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2019 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following statements as at 30 June 2019 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to the financial statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the General Manager is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The General Manager is also responsible for such internal control as the General Manager determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Appendix E: Annual financial statements (cont.)

In preparing the financial statements, the General Manager is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The General Manager is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

Auditor's responsibilities for the audit of the financial statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Peter Kerr

Executive Director

Delegate of the Auditor-General

Canberra

4 September 2019

FAIR WORK COMMISSION


STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2019 comply with subsection 42(2) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Fair Work Commission will be able to pay its debts as and when they fall due.

Signed 

Bernadette O'Neill
Accountable Authority
4 September 2019

Signed 

Jack Lambalk
Chief Financial Officer
4 September 2019

Appendix E: Annual financial statements (cont.)**CONTENTS****Certification****Primary financial statements**

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 - 6.2. Key Management Personnel Remuneration
 - 6.3. Related Party Disclosures
7. Managing Uncertainties
 - 7.1. Contingent Assets and Liabilities
 - 7.2. Financial Instruments
 - 7.3. Administered – Financial Instruments
 - 7.4. Fair Value Measurement
8. Other Information
 - 8.1. Aggregate Assets and Liabilities

Statement of Comprehensive Income
for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Employee benefits	1.1A	49,280	46,802	48,032
Suppliers	1.1B	29,193	29,471	28,070
Depreciation and amortisation	3.2A	5,623	6,230	6,222
Write down and impairment of assets		62	18	-
Total expenses		84,158	82,521	82,324
Own-Source Income				
Own-source revenue				
Rental income	1.2A	1,841	2,055	1,800
Other revenue	1.2B	335	188	255
Total own-source revenue		2,176	2,243	2,055
Total own-source income		2,176	2,243	2,055
Net cost of services		(81,982)	(80,278)	(80,269)
Revenue from Government	1.2C	74,840	74,133	74,047
Deficit on continuing operations		(7,142)	(6,145)	(6,222)
OTHER COMPREHENSIVE INCOME				
Items not subject to subsequent reclassification to net cost of services		-	-	-
Total comprehensive loss		(7,142)	(6,145)	(6,222)

The above statement should be read in conjunction with the accompanying notes.

Appendix E: Annual financial statements (cont.)**Budget Variances Commentary****Statement of Comprehensive Income for Fair Work Commission**

Explanations have been provided for major variances. Variances are considered to be “major” based on the following criteria:

- variance between budget and actual is greater than 10% at item level; and
- variance is greater than 2% of the relevant categories. In the case of the Statement of Comprehensive Income, they are total expenses or total revenue.

Depreciation and amortisation

The depreciation and amortisation expense were lower than budgeted as the Commission paused the development of eCase asset during the year and did not begin depreciation of the asset as budgeted.

Other revenue

The variation against budget in respect of other revenue reflects higher than anticipated hearing room hire during the financial year.

Statement of Financial Position
as at 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents	3.1A	719	562	1
Trade and other receivables	3.1B	34,171	31,817	30,098
Total financial assets		34,890	32,379	30,099
Non-financial assets				
Leasehold improvements	3.2A	18,152	21,631	17,833
Plant and equipment	3.2A	2,880	4,078	3,420
Computer software	3.2A	4,385	4,012	3,668
Other non-financial assets	3.2B	9,617	14,681	4,612
Total non-financial assets		35,034	44,402	29,533
Total assets		69,924	76,781	59,632
LIABILITIES				
Payables				
Suppliers	3.3A	799	2,143	4,017
Other payables	3.3B	16,016	17,019	1,908
Total payables		16,815	19,162	5,925
Provisions				
Employee provisions	6.1A	14,608	13,530	13,100
Other provisions		89	89	89
Total provisions		14,697	13,619	13,189
Total liabilities		31,512	32,781	19,114
Net assets		38,412	44,000	40,518
EQUITY				
Contributed equity		47,474	45,920	48,292
Reserves		12,410	12,410	12,410
Accumulated deficit		(21,472)	(14,330)	(20,184)
Total equity		38,412	44,000	40,518

The above statement should be read in conjunction with the accompanying notes.

Appendix E: Annual financial statements (cont.)**Budget Variances Commentary****Statement of Financial Position for Fair Work Commission**

Explanations have been provided for major variances. Variances are considered to be “major” based on the following criteria:

- variance between budget and actual is greater than 10% at item level; and
- variance is greater than 2% of the relevant categories. In the case of the Statement of Financial Position, it is total equity.

Cash and cash equivalents

Variance was due to timing of appropriation drawdowns and supplier payments.

Trade and other receivables

Appropriations receivables are higher than budgeted due to lower than expected capital expenditure and additional funding provided to support member appointments and the Workplace Advice Service.

Plant and equipment

The Commission had less than expected purchase of plant and equipment during the financial year.

Computer Software

Issues were encountered with the development of the Commissions case management system, and as a consequence the Commission did not begin depreciation of the asset as budgeted.

Other non-financial assets

Other non-financial assets were higher than budgeted as lease incentive receivable balance in the budget was not adjusted on entering two major lease commitments in the prior year.

Suppliers

The variance in suppliers is due to timing of invoices received at the end of the financial year.

Other payables

In the prior year, the Commission entered two major long-term property leases. Incentives associated with lease agreements, are recorded as liabilities and released as an offset against expenditure over the term of the lease. The budget was not adjusted in time for Budget statement preparation.

Employee provisions

The Commission's employee provisions were higher than expected largely as a result of movement in government bond rates, which had the impact of significantly increasing the present value of entitlements.

Contributed equity

Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2015-16 was repealed on the 1st of July 2018. The balance of unspent appropriations repealed was \$818K. The repeal was not anticipated at preparation of budget.

Accumulated deficit

Refer the Statement of Comprehensive Income for associated variance commentary.

Statement of Changes in Equity
for the period ended 30 June 2019

	2019	2018	Original Budget
	\$'000	\$'000	\$'000
CONTRIBUTED EQUITY			
Opening balance	45,920	43,538	45,920
Transactions with owners			
Contributions by owners			
Departmental capital budget	1,554	2,382	2,372
Total transactions with owners	1,554	2,382	2,372
Closing balance as at 30 June	47,474	45,920	48,292
ACCUMULATED DEFICIT			
Opening balance	(14,330)	(8,185)	(13,962)
Comprehensive income			
Deficit for the period	(7,142)	(6,145)	(6,222)
Total comprehensive income	(7,142)	(6,145)	(6,222)
Closing balance as at 30 June	(21,472)	(14,330)	(20,184)
ASSET REVALUATION RESERVE			
Opening balance	12,410	12,410	12,410
Comprehensive income			
Total comprehensive income	-	-	-
Closing balance as at 30 June	12,410	12,410	12,410

Appendix E: Annual financial statements (cont.)**Statement of Changes in Equity**
for the period ended 30 June 2019

	2019 \$'000	2018 \$'000	Original Budget \$'000
TOTAL EQUITY			
Opening balance	44,000	47,763	44,368
Comprehensive income			
Deficit for the period	(7,142)	(6,145)	(6,222)
Total comprehensive income	(7,142)	(6,145)	(6,222)
Transactions with owners			
Contributions by owners			
Departmental capital budget	1,554	2,382	2,372
Total transactions with owners	1,554	2,382	2,372
Closing balance as at 30 June	38,412	44,000	40,518

The above statement should be read in conjunction with the accompanying notes.

Accounting PolicyEquity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budget (DCBs) are recognised directly in contributed equity in that year.

Budget Variances Commentary**Statement of Changes in Equity for Fair Work Commission**

Explanations have been provided for major variances. Variances are considered to be "major" based on the following criteria:

- variance between budget and actual is greater than 10% at item level; and
- variance is greater than 2% of the relevant categories. In the case of the Statement of Changes in Equity, it is total equity.

Departmental capital budget

Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2015-16 was repealed on the 1st of July 2018. The balance of unspent appropriations repealed was \$818K. The repeal was not anticipated at preparation of budget.

Accumulated deficit

Refer the Statement of Comprehensive Income for associated variance commentary.

Cash Flow Statement

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
OPERATING ACTIVITIES				
Cash received				
Appropriations		72,444	73,797	74,010
Sale of goods and rendering of services		2,116	2,279	1,800
Net GST received		2,560	3,600	200
Total cash received		77,120	79,676	76,010
Cash used				
Employees		(48,172)	(45,975)	(47,995)
Suppliers		(28,964)	(29,918)	(28,015)
Total cash used		(77,136)	(75,893)	(76,010)
Net cash from/ (used by) operating activities		(16)	3,783	-
INVESTING ACTIVITIES				
Cash used				
Purchase of leasehold improvements		(296)	(1,388)	(250)
Purchase of property, plant and equipment		(192)	(731)	(622)
Purchase of computer software		(893)	(3,485)	(1,500)
Total cash used		(1,381)	(5,604)	(2,372)
Net cash used by investing activities		(1,381)	(5,604)	(2,372)
FINANCING ACTIVITIES				
Cash received				
Departmental capital budget		1,554	2,382	2,372
Total cash received		1,554	2,382	2,372
Net cash from financing activities		1,554	2,382	2,372
Net increase in cash held		157	561	-
Cash and cash equivalents at the beginning of the reporting period		562	1	1
Cash and cash equivalents at the end of the reporting period	3.1A	719	562	1

The above statement should be read in conjunction with the accompanying notes.

Appendix E: Annual financial statements (cont.)**Budget Variances Commentary****Cash Flow Statement for Fair Work Commission**

Explanations have been provided for major variances. Variances are considered to be “major” based on the following criteria:

- variance between budget and actual is greater than 10% at item level; and
- variance is greater than 2% of the relevant categories. In the case of the Cash Flow Statement, it is total equity.

Appropriations

Additional funding was received during the year to support the appointment of additional members to the Commission and the Workplace Advice Service, resulting in higher cash receipts for the year. The Commission drew on unspent prior year appropriations to fund assets purchases and make payments to creditors.

Net GST received

The Net GST cash received was inaccurately estimated in the budget papers.

Suppliers

The variance in suppliers is due to timing of invoices received at the end of the financial year.

Purchase of assets

The Commission had lower than expected capital expenditure during the financial year.

Departmental capital budget

Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2015-16 was repealed on the 1st of July 2018. The balance of unspent appropriations repealed was \$818K. The repeal was not anticipated at preparation of budget.

Administered Schedule of Comprehensive Income

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Other Expenses	2.1A	463	500	500
Total expenses		463	500	500
Income				
Revenue				
Non-taxation revenue				
Application fees received	2.2A	1,174	1,159	1,078
Total non-taxation revenue		1,174	1,159	1,078
Total revenue		1,174	1,159	1,078
Total income		1,174	1,159	1,078
Surplus		711	659	578

The above schedule should be read in conjunction with the accompanying notes.

Administered Schedule of Assets and Liabilities

as at 30 June 2019

As at 30 June 2019, there were no administered assets and liabilities (2018: nil).

Appendix E: Annual financial statements (cont.)

Administered Reconciliation Schedule			
	2019	2018	Original Budget
	\$'000	\$'000	\$'000
Opening assets less liabilities as at 1 July	-	-	-
Net contribution by services			
Income	711	659	-
Other comprehensive income	-	-	-
Transfers (to)/from Australian Government			
Appropriation transfers from Official Public Account			
Annual appropriations			
Payments to entities other than corporate Commonwealth entities	463	500	-
Appropriation transfers to OPA			
Transfers to OPA	(1,174)	(1,159)	-
Closing assets less liabilities as at 30 June	-	-	-

The above schedules should be read in conjunction with the accompanying notes.

Accounting Policy***Administered Cash Transfers to and from the Official Public Account***

Revenue collected by the Fair Work Commission for use by the Government rather than the Fair Work Commission is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Fair Work Commission on behalf of the Government and reported as such in the Schedule of Administered Cash Flows and in the Administered Reconciliation Schedule.

Administered Cash Flow Statement

for the period ended 30 June 2019

	2019 \$'000	2018 \$'000	Original Budget \$'000
OPERATING ACTIVITIES			
Cash received			
Application fees received	1,174	1,159	1,078
Total cash received	1,174	1,159	1,078
Cash used			
Refunds of application fees	(463)	(500)	(500)
Total cash used	(463)	(500)	(500)
Net cash from operating activities	711	659	578
Cash from Official Public Account			
Refunds of application fees	463	500	500
Total cash from official public account	463	500	500
Cash to Official Public Account			
Application fees received	(1,174)	(1,159)	(1,078)
Total cash to official public account	(1,174)	(1,159)	(1,078)
Cash and cash equivalents at the end of the reporting period	-	-	-

The above schedules should be read in conjunction with the accompanying notes.

Appendix E: Annual financial statements (cont.)**Overview****The Basis of Preparation**

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- a) *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR); and
- b) Australian Accounting Standards and Interpretations – Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The Financial Statements are presented in Australian dollars.

New Accounting Standards*Adoption of new Australian Accounting Standard Requirements*

All new, revised, amending standards and/or interpretations that were issued prior to the sign-off date and are applicable to the current reporting period did not have a material effect, and are not expected to have a future material effect on the Fair Work Commission's financial statements.

Future Australian Accounting Standard Requirements

All new, revised, amending standards and/or interpretations that were issued prior to the sign-off date and are applicable to future reporting period(s) are not expected to have a future material impact on the Fair Work Commission's financial statements.

Taxation

The Fair Work Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Except where otherwise stated, administered items are accounted for on the same basis and using the same polices as for departmental items, including the application of Australian Accounting Standards.

Events after the Reporting Period

There were no significant events that had the potential to significantly affect the ongoing structure and financial activities of the Fair Work Commission.

Administered

There were no significant events that had the potential to significantly affect the ongoing structure and financial activities of the Fair Work Commission.

Financial Performance

This section analyses the financial performance of Fair Work Commission for the year ended 2019.

1.1 Expenses

	2019 \$'000	2018 \$'000
1.1A: Employee benefits		
Wages and salaries	38,380	36,797
Superannuation:		
Defined contribution plans	4,366	4,106
Defined benefit plans	1,560	1,656
Leave and other entitlements	4,551	3,900
Separation and redundancies	155	184
Other employee expenses	268	159
Total employee benefits	49,280	46,802

Accounting Policy

Employee benefits expenses are recognised in the statement of comprehensive income upon services being rendered by employees.

1.1B: Suppliers

Goods and services supplied or rendered

Court/member services	2,541	3,388
Information Communications Technology	3,553	3,341
Property expenses	3,424	3,611
Office expense	777	1,051
Contractors	7,786	5,124
Other	413	423
Total goods and services supplied or rendered	18,494	16,938

Goods supplied	897	1,015
Services rendered	17,597	15,923
Total goods and services supplied or rendered	18,494	16,938

Other suppliers

Operating lease rentals in connection with minimum lease payments	10,578	12,404
Workers compensation expenses	121	129
Total other suppliers	10,699	12,533
Total suppliers	29,193	29,471

Leasing commitments

The Fair Work Commission in its capacity as lessee has committed to lease agreements throughout Australia in each capital city. Lease payments are subject to increases in accordance with fixed amounts according to lease agreements or market rental reviews. The Fair Work Commission may exercise option clauses in accordance with the terms of the leases.

The leasing commitments also include non-cancellable operating leases such as vehicles leases.

Appendix E: Annual financial statements (cont.)

	2019	2018
	\$'000	\$'000
Commitments for minimum lease payment in relation to non-cancellable operating leases are payable as follows:		
Within 1 year	13,666	13,265
Between 1 to 5 years	44,186	49,752
More than 5 years	29,882	37,925
Total operating lease commitments	87,734	100,942

Accounting Policy

Fair Work Commission do not have finance leases, only operating leases.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

1.2 Own-Source Revenue and Gains

	2019 \$'000	2018 \$'000
Own-Source Revenue		
1.2A: Rental Income		
Operating lease		
Sublease of property	1,841	2,055
Total rental income	1,841	2,055

Subleasing rental income commitments

The Commission in its capacity as lessor received rental income from subleasing part of the Sydney office during the 2018-19 financial year.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- the probable economic benefits associated with the transaction will flow to the Fair Work Commission.

Commitments for subleasing rental income receivables are as follows:

Within 1 year	2,052	1,981
Between 1 to 5 years	4,331	6,383
Total subleasing rental income commitments	6,383	8,364

1.2B: Other Revenue

Resources received free of charge		
Remuneration of auditors	56	55
Other revenue	279	133
Total other revenue	335	188

Accounting Policy

Resources Received Free of Charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

1.2C: Revenue from Government

Appropriations		
Departmental appropriations	74,840	74,133
Total revenue from Government	74,840	74,133

Accounting Policy

Revenue from Government

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the Fair Work Commission gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts. Funding received or receivable from non-corporate Commonwealth entities (appropriated to the non-corporate Commonwealth entity as a corporate Commonwealth entity payment item for payment to this entity) is recognised as Revenue from Government by the corporate Commonwealth entity unless the funding is in the nature of an equity injection or a loan.

Appendix E: Annual financial statements (cont.)**Income and Expenses Administered on Behalf of the Government**

This section analyses the activities that the Fair Work Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

2.1 Administered – Expenses

	2019 \$'000	2018 \$'000
2.1A: Expenses		
Refunds of applicant fees	(463)	(500)
Total expenses	<u>(463)</u>	<u>(500)</u>

Accounting Policy

Refunded applicant fees expense is recognised in the statement of comprehensive income upon receipt of advice that the application has been discontinued by the applicant or their representative.

2.2 Administered – Income

	2019 \$'000	2018 \$'000
Revenue		
Non-Taxation Revenue		
<u>2.2A: Fees</u>		
Application fees received	1,174	1,159
Total fees	<u>1,174</u>	<u>1,159</u>

Accounting Policy

All administered revenues are revenues relating to ordinary activities performed by the Fair Work Commission on behalf of the Australian Government. As such, administered appropriations are not revenues of the Fair Work Commission. The Fair Work Commission oversees distribution or expenditure of the funds as directed.

The Fair Work Commission receives revenue from fees charged for lodgement of Unfair Dismissal applications, Anti-bullying applications, General Protections applications and Unlawful Termination applications. Administered revenue is recognised when the application fee is processed.

Appendix E: Annual financial statements (cont.)

Financial Position

This section analyses the Fair Work Commission's assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and Relationships section.

3.1 Financial Assets

	2019 \$'000	2018 \$'000
3.1A: Cash and Cash Equivalents		
Cash on hand or on deposit	719	562
Total cash and cash equivalents	719	562
3.1B: Trade and Other Receivables		
Goods and services receivables		
Goods and services	173	84
Total goods and services receivables	173	84
Appropriations receivables		
Appropriation receivable	33,759	31,363
Total appropriations receivables	33,759	31,363
Other receivables		
GST receivable	239	370
Total other receivables	239	370
Total trade and other receivables (gross)	34,171	31,817
Less impairment loss allowance	-	-
Total trade and other receivables (net)	34,171	31,817

Credit terms for goods and services were within 30 days (2018: 30 days).

Accounting Policy*Financial assets*

Trade receivables, loans and other receivables that are held for the purpose of collecting the contractual cash flows where the cash flows are solely payments of principal and interest, that are not provided at below-market interest rates, are subsequently measured at amortised cost using the effective interest method adjusted for any loss allowance.

3.2 Non-Financial Assets

3.2.A: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment and Intangibles

	Leasehold Improvements \$'000	Property, Plant and Equipment \$'000	Computer software ¹ \$'000	Total \$'000
As at 1 July 2018				
Gross book value	25,597	5,339	7,285	38,221
Accumulated amortisation and impairment	(3,966)	(1,261)	(3,273)	(8,500)
Total as at 1 July 2018	21,631	4,078	4,012	29,721
Additions				
Purchase	296	192	-	488
Internally developed	-	-	893	893
Depreciation and amortisation	(3,775)	(1,390)	(458)	(5,623)
Disposals	-	-	(62)	(62)
Total as at 30 June 2019	18,152	2,880	4,385	25,417
Total as at 30 June 2019 represented by				
Gross book value	25,893	5,531	8,017	39,441
Accumulated depreciation, amortisation and impairment	(7,741)	(2,651)	(3,632)	(14,024)
Total as at 30 June 2019	18,152	2,880	4,385	25,417

1. The carrying amount of computer software included \$9,745 purchased software and \$4,375,339 internally generated software.

No indicators of impairment were found for leasehold improvements, property, plant and equipment. No assets from leasehold improvements, property, plant and equipment and computer software are expected to be sold or disposed of within the next 12 months.

Over the previous 2 years, the Commission has developed a new case management system (eCase). Performance issues were encountered at initial launch in August 2018 and the Commission temporarily reverted to its previous case management system. It is anticipated that the first stage of the new system will be re-launched in the second quarter of 2019-20, with other stages to follow in the financial year. The Commission has assessed the carrying value of the asset at 30 June 2019 and is satisfied that it is not impaired.

Appendix E: Annual financial statements (cont.)

Accounting Policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property lease taken up by the Fair Work Commission where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Fair Work Commission's leasehold improvements with a corresponding provision for the 'make good' recognised.

Revaluations

Following initial recognition at cost, property, plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Fair Work Commission using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2019	2018
Leasehold		
Improvements	Lease term	Lease term
Plant and equipment	3 to 10 years	3 to 10 years

Impairment

All assets were assessed for impairment at 30 June 2019. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Fair Work Commission were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

Intangibles

The Fair Work Commission's intangibles comprise internally developed and purchased software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Fair Work Commission's software are 3 to 10 years (2018: 3 to 10 years).

All software assets were assessed for indications of impairment as at 30 June 2019.

	2019 \$'000	2018 \$'000
<u>3.2B: Other Non-Financial Assets</u>		
Prepayments	1,878	2,077
Lease incentive	7,307	12,162
Lease receivables	432	442
Total other non-financial assets	9,617	14,681

No indicators of impairment were found for other non-financial assets.

Appendix E: Annual financial statements (cont.)**3.3 Payables**

	2019	2018
	\$'000	\$'000
3.3A: Suppliers		
Trade creditors and accruals	799	2,143
Total suppliers	799	2,143

Settlement terms for suppliers are 30 days.

3.3B: Other payables

Salaries and wages	320	293
Superannuation	37	31
Lease payable	3,549	2,911
Lease incentives	12,110	13,784
Total other payables	16,016	17,019

Accounting Policy

Lease incentives and other lease payables arise from the associated lease payments being expensed on a straight-line basis in accordance with AASB 117 Leases.

Assets and Liabilities Administered on Behalf of the Government

This section analyses assets used to conduct operations and the operating liabilities incurred. As a result, the Fair Work Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

4.1 Administered – Financial Assets

As at 30 June 2019, there were no administered financial assets and liabilities that required disclosure (2018: nil).

Appendix E: Annual financial statements (cont.)

Funding

This section identifies the Fair Work Commission funding structure.

5.1 Appropriations**5.1A: Annual Appropriations (Recoverable GST exclusive)****Annual Appropriations for 2019**

	Annual Appropriation ¹ \$'000	Adjustments to Appropriation ² \$'000	Total Appropriation \$'000	Appropriation applied in 2019 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	74,840	2,120	76,960	73,336	3,624
Capital Budget ⁴	2,372	-	2,372	1,381	991
Total departmental	77,212	2,120	79,332	74,717	4,615

1. Appropriations reduced under Appropriation Acts (Nos. 1, 3 & 5); sections 10, 11 and 12 and under Appropriation Acts (Nos. 2, 4 & 6); sections 12, 13 and 14. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.
2. PGPA Act Section 74 receipts.
3. The variance between total annual appropriation available and total appropriation applied in 2019 relates to unspent appropriations funded from current year appropriation items.
4. Departmental Capital Budgets are appropriated through Appropriation Acts (Nos. 1, 3 & 5). They form part of ordinary annual services and are not separately identified in the Appropriation Acts.

Annual Appropriations for 2018

	Annual Appropriation ¹ \$'000	Adjustments to Appropriation ² \$'000	Total Appropriation \$'000	Appropriation applied in 2018 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	74,133	2,189	76,322	71,801	4,521
Capital Budget ⁴	2,382	-	2,382	2,382	-
Total departmental	76,515	2,189	78,704	74,183	4,521

1. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

2. PGPA Act Section 74 receipts.

3. The variance between total annual appropriation available and total appropriation applied in 2018 relates to unspent appropriations funded from current year appropriation items.

4. Departmental Capital Budgets are appropriated through Appropriation Acts (Nos. 1, 3 & 5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

Appendix E: Annual financial statements (cont.)**5.1B: Unspent Annual Appropriations ('Recoverable GST exclusive')**

	2019 \$'000	2018 \$'000
Departmental		
Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2015-16	-	818
Appropriation Act (No.1) 2017-18	-	31,107
Appropriation Act (No.1) 2018-19	34,478	-
Total departmental	34,478	31,925

5.1C: Special Appropriations ('Recoverable GST exclusive')

	Appropriation applied	
	2019 \$'000	2018 \$'000
Authority		
<i>Public Governance, Performance and Accountability Act 2013 s.77, Administered</i>	(463)	(500)
Total special appropriations applied	(463)	(500)

5.1D: Disclosure by Agent in Relation to Annual and Special Appropriations ('Recoverable GST exclusive')

	Department of Finance – to make payment to beneficiaries under the Judges Pension Scheme 2019 \$'000
2019	
Total Receipts	7,285
Total Payments	(7,285)
	Department of Finance – to make payment to beneficiaries under the Judges Pension Scheme 2018 \$'000
2018	
Total Receipts	7,219
Total Payments	(7,219)

5.2 Net Cash Appropriation Arrangements

	2019 \$'000	2018 \$'000
Total comprehensive income/(loss) less depreciation/amortisation expenses previously funded through revenue appropriations	(1,519)	85
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(5,623)	(6,230)
Total comprehensive income/(loss) - as per the Statement of Comprehensive Income	(7,142)	(6,145)

Appendix E: Annual financial statements (cont.)**People and Relationships**

This section describes a range of employment and post-employment benefits provided to our people and our relationships with other key people.

6.1 Employee Provisions

	2019 \$'000	2018 \$'000
6.1A: Employee Provisions		
Leave	14,608	13,451
Separations and redundancies	-	79
Total employee provisions	14,608	13,530

6.1B: Administered – Employee Provisions

As at 30 June 2019, there were no administered employee provisions (2018: nil).

Accounting Policy

Liabilities for short-term employee benefits and termination benefits expected to be settled within twelve months of the end of reporting period are measured at their nominal amounts.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

Leave

The liability for employee benefits includes provision for annual leave, long service leave and Judges Long leave.

Members of the Fair Work Commission, who were Presidential Members under the Workplace Relations Act 1996 and the President of the Fair Work Commission, accrue six months long leave after five years of service as a Presidential Member. In recognition of the nature of Presidential Members' tenure, a provision is accrued from the first year of service.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Fair Work Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by use of the Australian Government Actuary's shorthand method using the standard Commonwealth sector probability profile. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Fair Work Commission recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

The majority of staff and Members of the Fair Work Commission are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The Fair Work Commission makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Fair Work Commission accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June 2019 represents outstanding contributions for the final fortnight of the year.

Judge's Pension

Members of the Fair Work Commission who are Presidential Members under the *Workplace Relations Act 1996* and the President of the Fair Work Commission are eligible for pensions under the Judges' Pension Scheme (JPS) pursuant to the *Judges' Pensions Act 1968*. The JPS is an unfunded defined benefit scheme that is governed by the rules set out in the Act.

The Fair Work Commission does not contribute towards the cost of the benefit during such Member's term of service. Liability and expenses associated with the JPS are recorded as part of the Department of Finance financial statements. The Department of Finance has given the Fair Work Commission drawing rights for the financial year in relation to the special appropriation made under the *Judges' Pensions Act 1968*. The Fair Work Commission makes pension payments directly to beneficiaries of the scheme (refer to Note 5.1D).

Appendix E: Annual financial statements (cont.)**6.2 Key Management Personnel Remuneration**

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity. The Fair Work Commission has determined the key management personnel to be the Portfolio Minister, the General Manager and Senior Executive Service (SES). Key management personnel remuneration is reported in the table below:

	2019 \$'000	2018 \$'000
Short-term employee benefits	1,088	987
Post-employment benefits	133	123
Other long-term employee benefits	36	25
Termination benefits	95	-
Total key management personnel remuneration expenses¹	1,352	1,135

The total numbers of key management personnel that are included in the above table are 7 (2018: 4).

1. The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the Fair Work Commission.

6.3 Related Party Disclosures

Related party relationships:

The entity is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and Executive.

Transactions with related parties:

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. These transactions have not been separately disclosed in this note.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed (2018: nil).

Appendix E: Annual financial statements (cont.)**Managing Uncertainties**

This section analyses how the Fair Work Commission manages financial risks within its operating environment.

7.1A: Contingent Assets and Liabilities**Quantifiable Contingencies**

As at 30 June 2019, there were no quantifiable contingent liabilities or assets requiring disclosure (2018: nil).

Unquantifiable Contingencies

As at 30 June 2019, there were no unquantifiable contingent liabilities or assets requiring disclosure (2018: nil).

Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

7.1B: Administered – Contingent Assets and Liabilities

As at 30 June 2019, there were no administered contingent assets or liabilities that required disclosure (2018: nil).

Appendix E: Annual financial statements (cont.)

7.2: Financial Instruments

	2019 \$'000	2018 \$'000
7.2A: Categories of Financial Instruments		
Financial Assets under AASB 139		
Loans and receivables		
Cash and cash equivalents		562
Trade and other receivables		84
Total loans and receivables		<u>646</u>
Financial Assets under AASB 9		
Financial Assets at amortised cost		
Cash and cash equivalents	719	
Trade and other receivables	173	
Total financial assets at amortised cost	<u>892</u>	
Total financial assets	<u>892</u>	646
Financial Liabilities		
Financial liabilities measured at amortised cost		
Trade creditors and accruals	799	2,143
Total financial liabilities measured at amortised cost	<u>799</u>	<u>2,143</u>
Total financial liabilities	<u>799</u>	2,143

Classification of financial assets on the date of initial application of AASB 9.

Financial assets class	Note	AASB 139 original classification	AASB 9 new classification	AASB 139 carrying amount at 1 July 2018 \$'000	AASB 9 carrying amount at 1 July 2018 \$'000
Cash and cash equivalents	3.1A	Loans and receivables	Amortised Cost	562	562
Trade and other receivables	3.1B	Loans and receivables	Amortised Cost	84	84
Total financial assets				<u>646</u>	<u>646</u>

Reconciliation of carrying amounts of financial assets on the date of initial application of AASB 9.

	AASB 139 carrying amount at 30 June 2018 \$'000	Reclassification \$'000	Remeasurement \$'000	AASB 9 carrying amount at 1 July 2018 \$'000
Financial assets at amortised cost				
Loans and receivables				
Cash and cash equivalents	562	-	-	562
Trade and other receivables	84	-	-	84
Total amortised cost	<u>646</u>	<u>-</u>	<u>-</u>	<u>646</u>

<p>Accounting Policy</p> <p><u>Financial assets</u></p> <p>With the implementation of AASB 9 <i>Financial Instruments</i> for the first time in 2019, the Fair Work Commission classifies its financial assets in the category of financial assets measured at amortised cost.</p> <p>The classification depends on both the entity's business model for managing the financial assets and contractual cash flow characteristics at the time of initial recognition. Financial assets are recognised when the entity becomes a party to the contract and, as a consequence, has a legal right to receive or a legal obligation to pay cash and derecognised when the contractual rights to the cash flows from the financial asset expire or are transferred upon trade date.</p> <p>Comparatives have not been restated on initial application.</p> <p><u>Financial Assets at Amortised Cost</u></p> <p>Financial assets included in this category need to meet two criteria:</p> <ol style="list-style-type: none"> 1. the financial asset is held in order to collect the contractual cash flows; and 2. the cash flows are solely payments of principal and interest (SPPI) on the principal outstanding amount. <p>Amortised cost is determined using the effective interest method.</p>	<p><u>Effective Interest Method</u></p> <p>Income is recognised on an effective interest rate basis for financial assets that are recognised at amortised cost.</p> <p><u>Impairment of Financial Assets</u></p> <p>Financial assets are assessed for impairment at the end of each reporting period based on Expected Credit Losses, using the general approach which measures the loss allowance based on an amount equal to <i>lifetime expected credit losses</i> where risk has significantly increased, or an amount equal to <i>12-month expected credit losses</i> if risk has not increased.</p> <p>The simplified approach for trade, contract and lease receivables is used. This approach always measures the loss allowance as the amount equal to the lifetime expected credit losses.</p> <p><u>Financial liabilities</u></p> <p>Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.</p> <p><u>Financial Liabilities at Amortised Cost</u></p> <p>Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).</p>
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Appendix E: Annual financial statements (cont.)**7.3: Administered – Financial Instruments**

As at 30 June 2019, there were no administered financial instruments that required disclosure (2018: nil).

7.4 Fair Value Measurement

Accounting Policy

The fair value of non-financial assets has been taken to be the market value of similar assets. The agency's assets are held for operational purposes and not held for the purposes of deriving a profit. The current use of all controlled assets is considered their highest and best use. The agency procured valuation services from Jones Lang LaSalle Public Sector Valuations Pty Ltd (JLLPSV) for the 2016-17 financial year and relied on valuation models provided by JLLPSV. JLLPSV has provided written assurance to the agency that the valuation models developed are in accordance with AASB 13.

7.4A: Fair Value Measurement

	Fair value measurements at the end of the reporting period	
	2019	2018
	\$'000	\$'000
Non-financial assets ²		
Plant and Equipment ¹	2,880	4,078
Leasehold Improvements ¹	18,152	21,631
Total Non-financial assets	21,032	25,709

1. No non-financial assets were measured at fair value on a non-recurring basis as at 30 June 2019 (2018: nil).
2. The Fair Work Commission's assets are held for operational purposes and not held for the purposes of deriving a profit. The current use of all non-financial assets is considered their highest and best use.

Appendix E: Annual financial statements (cont.)**7.5 Administered - Fair Value Measurement**

As at 30 June 2019, there was no administered fair value measurement that required disclosure (2018: nil).

Other Information

8.1: Aggregate Assets and Liabilities

8.1A: Aggregate Assets and Liabilities

	2019 \$'000	2018 \$'000
Assets expected to be recovered in:		
No more than 12 months	41,865	39,311
More than 12 months	<u>28,059</u>	<u>37,470</u>
Total assets	<u>69,924</u>	<u>76,781</u>
Liabilities expected to be settled in:		
No more than 12 months	6,637	7,578
More than 12 months	<u>24,875</u>	<u>25,203</u>
Total liabilities	<u>31,512</u>	<u>32,781</u>

8.1B: Administered - Aggregate Assets and Liabilities

As at 30 June 2019, there were no aggregate administered assets and liabilities (2018: nil).

Appendix F: Entity resources

Table F1: Fair Work Commission resource statement 2018–19

	Actual available appropriation for 2018-19 \$'000	Payments made 2018-19 \$'000	Balance remaining 2018-19 \$'000
	(a)	(b)	(a) – (b)
Ordinary annual services ¹			
Departmental appropriation ²	111,312	76,834	34,478
Total ordinary annual services	111,312	76,834	34,478
Total available annual appropriations and payments	111,312	76,834	34,478
Total net resourcing and payments for Fair Work Commission	111,312	76,834	34,478

1 Appropriation Act (No. 1 and No. 3) 2018–19 and prior-year departmental appropriations and s.74 retained revenue receipts.

2 Includes an amount of \$2.372 million in 2018–19 for the departmental capital budget. For accounting purposes, this amount has been designated as 'contributions by owners'.

Table F2: Fair Work Commission expenses by outcomes 2018-19

	Budget* 2018-19 \$'000	Actual expenses 2018-19 \$'000	Variation 2018-19 \$'000
	(a)	(b)	(a) - (b)
Expenses for Outcome 1			
Outcome 1: Simple, fair and flexible workplace relations for employees and employers through the exercise of powers to set and vary minimum wages and modern awards, facilitate collective bargaining, approve agreements and deal with disputes.			
<i>Program 1.1: Dispute resolution, minimum wages, orders and approval of agreements</i>			
Departmental expenses			
Departmental appropriation ¹	76,840	78,417	(1,577)
Expenses not requiring appropriation in the budget year ²	5,977	5,679	298
Total for Program 1.1	82,817	84,096	(1,279)
Outcome 1 totals by appropriation type			
Departmental expenses			
Departmental appropriation ¹	76,840	78,417	(1,577)
Expenses not requiring appropriation in the budget year ²	5,977	5,679	298
Total expenses for Outcome 1	82,817	84,096	(1,279)
	2018-19	2018-19	Variation 2018-19
Average staffing level (number)	318	315	3

• Full-year budget, including any subsequent adjustment made to the 2018-19 budget at Additional Estimates.

1 Departmental appropriation combines ordinary annual services (Appropriation Act No. 1 and No. 3) and retained revenue receipts under s.74 of the *Public Governance, Performance and Accountability Act 2013*.

2 Expenses not requiring appropriation in the Budget year are made up of Depreciation Expenses, Amortisation Expense and Audit Fees.

Appendix G: Other mandatory information

Work health and safety

The Commission has work health and safety management arrangements consistent with the *Work Health and Safety Act 2011* (WHS Act).

The arrangements set out a statement of commitment, a workplace health and safety policy, consultation arrangements, agreed employer and employee responsibilities, and work health and safety structures and arrangements. They also set out guidelines for workplace inspections, training and information and emergency procedures.

Work Health and Safety Committee

The Commission has five work groups, 13 health and safety representatives, and a national Work Health and Safety Committee.

Initiatives

In 2018–19, the Commission continued to promote work health and safety. During the year the most significant workplace health and safety initiatives were:

- workstation assessments and, where needed, rehabilitation case management services, to meet the health, safety and rehabilitation needs of the workforce
- early intervention strategies, which included the provision of specialised equipment and advice to assist staff following injury
- the influenza vaccination program, which was available to all staff
- healthy lifestyle initiatives, including subsidised yoga and pilates programs in some locations at lunchtime
- R U OK? Day, which was part of a broader initiative promoting a more connected community
- fortnightly publication of work, health and safety information and tips.

The Commission closely monitors its compensation costs and internal rehabilitation programs against broader APS compensation costs and the increasing number of longer-term injuries and more complex claims.

In 2018–19, the Commission did not receive any new compensation claims, and does not have any ongoing claims. A total of 18 accidents or incidents involving employees or other parties were reported, compared with 14 in 2017–18.

Notifiable accidents and occurrences

Under s.38 of the WHS Act, the Commission is required to notify Comcare of any notifiable accidents or dangerous incidents arising out of work undertaken by any of its employees. The Commission had no reportable accidents or incidents in 2018–19.

Investigations

Under Part 4 of the WHS Act, the Commission is required to report any investigations conducted during the year into any of its undertakings. No investigations were conducted in 2018–19.

Other matters

Under Part 5 of the WHS Act, health and safety representatives are entitled to issue provisional improvement notices to address immediate risks to improve health and safety performance. No notices were issued in 2018–19.

Advertising and market research

The Commission is required to disclose payments to advertising agencies and to market research, polling, direct mail and media advertising organisations. Payments of \$13,800 or less (including GST) are excluded, consistent with s.311A of the *Commonwealth Electoral Act 1918*. The Commission did not make any payments above the threshold in 2018–19.

Ecologically sustainable development and environmental performance

Australian Government agencies are required to report on their performance regarding the environment and ecologically sustainable development under s.516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

The Commission ensures that it utilises energy resources as efficiently as practicable and maintains a healthy working environment for members of staff and the public.

Programs are in place for the recycling of paper, packaging, batteries, equipment, toner and other materials to reduce the Commission's carbon footprint.

Kitchens in a number of offices have separate bins to manage waste, including organic, recycling and general waste.

Sensor lighting is installed in hearing rooms, conference rooms, meeting rooms and offices. A timer mechanism automatically switches lighting off when rooms are not occupied.

The Commission has continued to reduce its carbon footprint by utilising videoconferencing as an alternative to travel.

The Commission ensures that new leases over a certain size have a green rating. The Commission actively encourages its landlords to increase their National Australian Built Environment Rating System rating, a national rating system that measures the environmental performance of Australian buildings, tenancies and homes.

Appendix H: List of requirements

PGPA Rule Reference	Part of Report	Description	Requirement	Page
17AD(g)	Letter of transmittal			
17AI		A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	1
17AD(h)	Aids to access			
17AJ(a)		Table of contents	Mandatory	3–4
17AJ(b)		Alphabetical index	Mandatory	°–226
17AJ(c)		Glossary of abbreviations and acronyms	Mandatory	215–217
17AJ(d)		List of requirements	Mandatory	206–211
17AJ(e)		Details of contact officer	Mandatory	Inside cover
17AJ(f)		Entity's website address	Mandatory	Inside cover
17AJ(g)		Electronic address of report	Mandatory	Inside cover
17AD(a)	Review by accountable authority			
17AD(a)		A review by the accountable authority of the entity.	Mandatory	11–12
17AD(b)	Overview of the entity			
17AE(1)(a)(i)		A description of the role and functions of the entity.	Mandatory	13
17AE(1)(a)(ii)		A description of the organisational structure of the entity.	Mandatory	13–16
17AE(1)(a)(iii)		A description of the outcomes and programmes administered by the entity.	Mandatory	101
17AE(1)(a)(iv)		A description of the purposes of the entity as included in corporate plan.	Mandatory	101
17AE(1)(aa)(i)		Name of the accountable authority or each member of the accountable authority.	Mandatory	116
17AE(1)(aa)(ii)		Position title of the accountable authority or each member of the accountable authority.	Mandatory	116
17AE(1)(aa)(iii)		Period as the accountable authority or member of the accountable authority within the reporting period.	Mandatory	116
17AE(1)(b)		An outline of the structure of the portfolio of the entity.	Portfolio departments – mandatory	N/A

PGPA Rule Reference	Part of Report	Description	Requirement	Page
17AE(2)		Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	N/A
17AD(c)	Report on the performance of the entity			
	<i>Annual performance statements</i>			
17AD(c)(i); 16F		Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	99–108
17AD(c)(ii)	Report on financial performance			
17AF(1)(a)		A discussion and analysis of the entity's financial performance.	Mandatory	127
17AF(1)(b)		A table summarising the total resources and total payments of the entity.	Mandatory	202–203
17AF(2)		If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, Mandatory	N/A
17AD(d)	Management and Accountability			
	<i>Corporate governance</i>			
17AG(2)(a)		Information on compliance with section 10 (fraud systems).	Mandatory	111
17AG(2)(b)(i)		A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	111
17AG(2)(b)(ii)		A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	111
17AG(2)(b)(iii)		A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	111

Appendix H: List of requirements (cont.)

PGPA Rule Reference	Part of Report	Description	Requirement	Page
17AG(2)(c)		An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	110
17AG(2)(d) – (e)		A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	If applicable, Mandatory	N/A
<i>External Scrutiny</i>				
17AG(3)		Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	112
17AG(3)(a)		Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	N/A
17AG(3)(b)		Information on any reports on operations of the entity by the Auditor-General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	N/A
17AG(3)(c)		Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	N/A
<i>Management of Human Resources</i>				
17AG(4)(a)		An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	114
17AG(4)(aa)		Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following: (a) statistics on full-time employees; (b) statistics on part-time employees; (c) statistics on gender; (d) statistics on staff location.	Mandatory	115–117
17AG(4)(b)		Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: <ul style="list-style-type: none"> ● Statistics on staffing classification level; ● Statistics on full-time employees; ● Statistics on part-time employees; ● Statistics on gender; ● Statistics on staff location; ● Statistics on employees who identify as Indigenous. 	Mandatory	118–121

PGPA Rule Reference	Part of Report	Description	Requirement	Page
17AG(4)(c)		Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	114–115
17AG(4)(c)(i)		Information on the number of SES and non-SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	114
17AG(4)(c)(ii)		The salary ranges available for APS employees by classification level.	Mandatory	125
17AG(4)(c)(iii)		A description of non-salary benefits provided to employees.	Mandatory	115
17AG(4)(d)(i)		Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	N/A
17AG(4)(d)(ii)		Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	N/A
17AG(4)(d)(iii)		Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	N/A
17AG(4)(d)(iv)		Information on aggregate amount of performance payments.	If applicable, Mandatory	N/A
Assets Management				
17AG(5)		An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities.	If applicable, mandatory	N/A
Purchasing				
17AG(6)		An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	126
Consultants				
17AG(7)(a)		A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	126

Appendix H: List of requirements (cont.)

PGPA Rule Reference	Part of Report	Description	Requirement	Page
17AG(7)(b)		A statement that <i>“During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]”.</i>	Mandatory	126
17AG(7)(c)		A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	126
17AG(7)(d)		A statement that <i>“Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.”</i>	Mandatory	126
Australian National Audit Office Access Clauses				
17AG(8)		If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor’s premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	N/A
Exempt contracts				
17AG(9)		If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	N/A
Small business				
17AG(10)(a)		A statement that <i>“[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”</i>	Mandatory	127
17AG(10)(b)		An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	127

PGPA Rule Reference	Part of Report	Description	Requirement	Page
17AG(10)(c)		If the entity is considered by the Department administered by the Finance Minister as material in nature – a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	N/A
Financial Statements				
17AD(e)		Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	157–201
Executive Remuneration				
17AD(da)		Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2–3 of the Rule.	Mandatory	123–124
17AD(f) Other Mandatory Information				
17AH(1)(a)(i)		If the entity conducted advertising campaigns, a statement that “During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.”	If applicable, Mandatory	N/A
17AH(1)(a)(ii)		If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	128
17AH(1)(b)		A statement that “Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity’s website].”	If applicable, Mandatory	N/A
17AH(1)(c)		Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	128
17AH(1)(d)		Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	128
17AH(1)(e)		Correction of material errors in previous annual report.	If applicable, mandatory	128
17AH(2)		Information required by other legislation.	Mandatory	204–205

Glossary

Annual performance statements	Statements prepared by the accountable authority of a Commonwealth entity in accordance with s.39 of the PGPA Act that acquit a Commonwealth entity's actual performance against planned performance described in the entity's corporate plan.
Applicant	The party who lodged an application with the Commission.
Arbitration	A process in which the Commission determines a grievance or dispute by imposing a binding settlement. The Commission has powers of compulsory arbitration as well as offering arbitration by consent, where permitted by the Fair Work Act.
Conciliation	One of the informal processes used by the Commission to facilitate the resolution of a grievance or a dispute between parties by helping them to reach an agreement.
Constitutional corporation	Defined under the Fair Work Act as 'a corporation to which paragraph 51(xx) of the Constitution applies'. The Australian Constitution defines constitutional corporations as 'Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'.
Constitutionally-covered business	A person conducting a business or undertaking, conducted principally in a territory or Commonwealth place, or where the person conducting the business or undertaking is: <ul style="list-style-type: none"> • a constitutional corporation • the Commonwealth • a Commonwealth authority, or • a body corporate incorporated in a territory.
Corporate Plan	A plan setting out the objectives, capabilities and intended results over a four-year period, in accordance with its stated purposes, required of Commonwealth entities under the PGPA Act.
Dispute resolution	The process conducted by the Commission, arising from the dispute resolution procedure in awards, agreements or the Fair Work Act, for resolving disputes.
Dispute resolution procedure	The procedure specified in a modern award or enterprise agreement for the resolution of disputes arising under the award or agreement and in relation to the National Employment Standards. If no procedure is specified, a model dispute resolution procedure specified in the Fair Work Act is deemed to apply.

Enterprise agreement	A legally enforceable agreement that covers the employment conditions of a group of employees and their employer.
<i>Fair Work Act 2009</i>	The principal Commonwealth law governing Australia's workplace relations system.
Fair Work Commission Rules	A legislative instrument made under the Fair Work Act setting out rules and procedural requirements for matters heard by the Commission.
<i>Fair Work (Registered Organisations) Act 2009</i>	Legislation regulating federally registered unions and employer organisations, including their registration and rules.
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	The legislation that governs transitional arrangements in connection with commencement of the Fair Work Act on 1 July 2009 and other related matters.
Full Bench	A Full Bench is convened by the President of the Commission and comprises at least three Commission Members, one of whom must be either the President, a Vice President or a Deputy President. Full Benches are convened to hear appeals and other matters specified in the Fair Work Act.
General protections	General workplace protections are specified in the Fair Work Act and include freedom of association; protection from discrimination and sham contracting; and the ability to exercise, or to not exercise, workplace rights.
Individual flexibility arrangement	An agreement between an employer and an individual employee that modifies the application of a modern award or enterprise agreement. The individual flexibility arrangement must satisfy the better off overall test. There is no requirement to register an individual flexibility arrangement.
Key performance indicator	A type of performance measurement (based on qualitative or quantitative data) used in assessing the efficiency or effectiveness of activities in achieving purposes.
Mediation	One of the informal processes used by the Commission to facilitate the resolution of a grievance or a dispute between parties by helping them to reach an agreement. Conciliation is another informal technique used.

Glossary (cont.)

Modern award	An award created by the Commission. Modern awards came into effect on 1 January 2010. Modern awards are expressed to cover entire industries and/or occupations, and include terms that complement the National Employment Standards. The Commission must ensure that, together with the standards, modern awards provide a fair and relevant minimum safety net.
National Employment Standards	A set of 10 minimum employment standards that came into effect on 1 January 2010 and apply to all employees within the federal system.
National minimum wage order	The order specifying a minimum wage for all national system employees, a casual loading for award and agreement-free employees, and special minimum wages for junior employees, trainees and employees with a disability.
Party	An applicant or a respondent to a proceeding before the Commission.
Portfolio budget statements	Statements that inform Parliament and the public of the proposed allocation of resources to government outcomes. They also assist the Senate standing committees with their examination of the government's Budget.
Protected action ballot	A secret ballot allowing employees who are directly concerned to vote on whether or not they authorise industrial action to advance the claims for their proposed enterprise agreement.
Registration	The process by which unions and employer associations formally register as industrial organisations under the Registered Organisations Act.
Respondent	A party to a matter who is responding to an application initiated by an applicant.
Right of entry	The legal right of union officials to enter business premises under certain conditions for purposes described in the Fair Work Act or the <i>Work Health and Safety Act 2011</i> .
Right of entry permit	A permit issued by the Commission to an official of a union under either the Fair Work Act or the <i>Work Health and Safety Act 2011</i> .
Small Business Fair Dismissal Code	The Small Business Fair Dismissal Code came into operation on 1 July 2009. The code applies to small business employers with fewer than 15 employees and provides protection against unfair dismissal claims where an employer follows the code.

Acronyms and abbreviations

ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AHRI	Australian Human Resources Institute
ALERA	Australian Labour and Employment Relations Association
AMWU	Australian Manufacturing Workers Union
APS	Australian Public Service
AWU	Australian Workers' Union
BMA	Billiton Mitsubishi Alliance
BOOT	better off overall test
COAT	Council of Australasian Tribunals
Commission	Fair Work Commission
CPD	Continuing Professional Development
CPSU	Community and Public Sector Union
ECM	enhanced case management
Fair Work Act (FWA)	<i>Fair Work Act 2009</i>
FOI Act	<i>Freedom of Information Act 1982</i>
FWC	Fair Work Commission
FWCFB	Fair Work Commission Full Bench
GST	goods and services tax
ILO	International Labour Organisation
IPS	Information Publication Scheme
IR	Industrial Relations
IRS	Industrial Relations Society
KPI	key performance indicator
NES	National Employment Standards
PBS	Portfolio Budget Statements
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
Public Service Act	<i>Public Service Act 1999</i>



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Registered Organisations Act (ROA)	<i>Fair Work (Registered Organisations) Act 2009</i>
RTBU	Rail, Tram and Bus Union
SES	Senior Executive Service
SME	small and medium enterprise
UNSW	University of New South Wales
UTS	University of Technology Sydney
WHS Act	<i>Work Health and Safety Act 2011</i>

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