

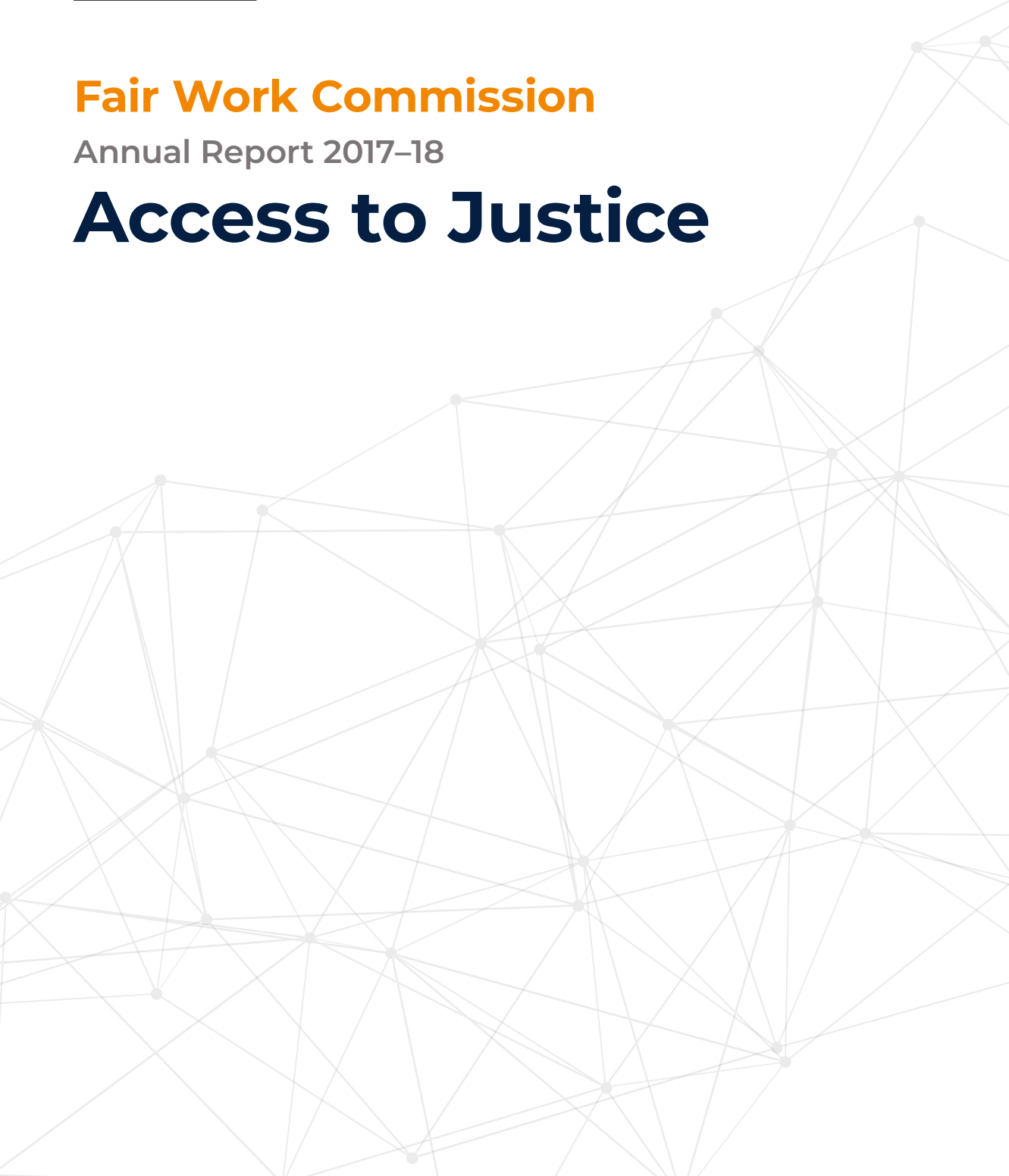


FairWork
Commission

Fair Work Commission

Annual Report 2017–18

Access to Justice



Fair Work Commission

Australia's national workplace relations tribunal

Requests for information and feedback

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

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ISSN 2204-3799 (printed copy)
ISSN 2202-3802 (online copy)



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Publication

This publication is designed by Collier Creative and edited by WordsWorth Writing. This publication is available in PDF and accessible format at www.fwc.gov.au/annual-report

Letter of transmittal



*Australia's National Workplace
Relations Tribunal*

18 September 2018

The Hon Kelly O'Dwyer MP
Minister for Jobs and Industrial Relations
Parliament House
Canberra ACT 2600

The Honourable
Justice Iain Ross AO
President

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 2018.

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 2018.

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 during 2017–18. 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 2017–18. 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 2017–18; Appendix E comprises the 2017–18 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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- About the Commission



Fair Work Commission

→
For hearings and conferences
please proceed to rooms as
indicated by the electronic
hearings list.

↑
For general enquiries,
applications or deliveries,
please proceed to level 4.

→
All other visitors please report
to concierge desk.

1 Overview

President's introduction

I am pleased to introduce the Fair Work Commission's annual report for 2017–18.

The Commission has had another busy and productive year, particularly in relation to access to justice programs, the continuation of the 4 yearly review of modern awards, and engagement with the people and businesses that use our services.

Access to justice

Access to legal advice improves access to justice. It reduces anxiety and confusion, and avoids unnecessary costs for all. In 2017–18, the Commission's Pro Bono Program and Workplace Advice Clinics continued to provide assistance to individuals and small businesses that cannot afford legal advice.

To enable us to reach more people, these services are being expanded into a broader program, the Workplace Advice Service, which commenced on 30 July 2018 in New South Wales and Victoria. The new service will progressively expand its reach across the country and the extent of assistance available.

The new service is made possible by the generous support of community legal centres, legal aid bodies, law firms and legal practitioners. I thank them for their

ongoing support, without which this valuable service to the community could not be provided.

Review of modern awards

Section 156 of the *Fair Work Act 2009* requires the Commission to review modern awards every four years. The current review, which began in 2014, has resulted in a very large and complex program of work, which I expect to be completed by the first quarter of 2019.

Modern awards provide a safety net of minimum conditions of employment, including pay rates, allowances, hours of work and overtime rates for approximately 2.3 million Australians. At present, two review processes are running in parallel—one for award-specific issues, and one for common issues that affect most or all of the 122 modern awards.

Award-specific issues concern substantive changes in relation to particular modern awards.

Common issues dealt with in 2017–18 included family and domestic violence, family friendly work arrangements, casual and part-time employment, and access to blood donor leave.



The Commission has also continued to work on producing awards in plain language to remove ambiguity and make it easier for employers and employees to understand awards and apply them in the workplace.

Information relating to proceedings for the 4 yearly review is published on the Commission's website, giving all interested parties access to the materials.

Agreement approval process

The Commission deals with more than 5,000 applications for approval of enterprise agreements each year. In 2017-18, the Commission received 5,287 applications to approve enterprise agreements, the second most common type of application received.

Since we introduced a triage process in 2015-16, there has been a significant increase in the proportion of applications identified as not meeting all of the statutory requirements at the time of lodgment. Dealing with non-compliant applications tends to be more time consuming and complex than dealing with compliant applications.

Rather than dismissing such applications, Members seek to assist the parties to agreements to address concerns through

written undertakings. Extra time is required to approve agreements with written undertakings, because the Commission must seek the views of all bargaining representatives before accepting an undertaking and granting approval.

Those factors have negatively impacted on the overall timeliness of the Commission's agreement approvals over the past 18 months. As a result, we did not meet our portfolio budget statements target of a median enterprise agreement approval time of 32 days in 2017-18.

Increased resources have been allocated to this area and in 2018-19 we will focus on working with employer and employee representatives to ensure that they have the information necessary to make compliant applications.

What's next

In the year ahead, we are determined to improve our services to the Australian community.

President's introduction (cont.)

On 30 July 2018, I launched our plan for the coming 12 months to improve access and reduce complexity for our users, called *What's Next*. Building on the achievements of our *Future Directions* change program, *What's Next* demonstrates our commitment to ongoing innovation and reform. It is a commitment driven by the needs and experiences of those who use our services—to continue to deliver an outstanding dispute resolution service to the Australian community.

A key indicator of access to justice is whether small business and individual users are able to resolve disputes simply and quickly, without the need for paid representation. We will look at ways to provide more support for applicants and respondents in the early stages of unfair dismissal and general protections cases, including ensuring that the first contact with the Commission for an employee applicant or an employer respondent will be a telephone call from a trained staff member. Early, personalised support can help address the uncertainty and confusion many self-represented employees and employers feel at the start of a claim about dismissal.

We will also commence a major review of all of our information resources to ensure that everyone who uses our services is provided with the information they want, at the time they need it, and in the most useful form. Starting with unfair dismissal information, the review will include our Rules, forms, correspondence and formal directions and the guidance material on our website, to ensure that they are accessible, accurate and consistent. We will consult broadly throughout this process and incorporate user testing and evaluation to make sure we get it right.

Full details of our *What's Next* plan are available on our website at www.fwc.gov.au.

Departing Members

A number of long-serving Members retired in 2017–18. I take this opportunity to acknowledge their contribution to the Commission and to the Australian community.

Thank you

The Commission has a long and proud history of providing outstanding services to the Australian community. This is in large part due to the dedication and hard work of its Members and staff. I thank them for their continued enthusiasm and commitment to improving our services. I also thank our stakeholders, including the law firms and community legal centres whose support is vital to the success of our access to justice initiatives.



Justice Iain Ross AO

General Manager's overview



I am pleased to provide this review of the Fair Work Commission for the 2017–18 financial year.

Overall, applications to the tribunal have been reasonably stable in the past year, with a 5 per cent reduction in lodgments overall.

We have operated within the resources provided by government, and essentially achieved a balanced budget, reporting a small funded surplus of \$85,000 for the financial year.

We have been able to conduct conciliations in unfair dismissal cases quicker than in the previous year and, with one exception, meet our other performance measures as detailed in the Commission's annual performance statements in this report. A major challenge in the reporting period has been the increase in the number of applications for approval of enterprise agreements that did not meet the statutory requirements when lodged. This has had a significantly deleterious impact on the timeliness of the finalisation of such applications. A significant priority in the year ahead will be to work with parties to help them lodge compliant applications, so that applications can be dealt with more quickly.

In the year ahead, we will continue to develop our new case management system, eCase, to deliver further integration with the Commission's systems and provide additional functionality. We will implement our new 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, use behavioural insights to improve service delivery, expand access to free legal advice, and work with users to produce summaries of modern awards and improve processing times for applications to approve enterprise agreements.

I express my appreciation to Members and our staff, for their dedication and commitment to the important work of the Commission.

A handwritten signature in black ink, appearing to read 'Bernadette O'Neill', is positioned above the printed name.

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 2017-18 portfolio budget statements are set out in the annual performance statements at page 95.

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 2018****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 2017-18, see Appendix C.

During 2017-18, the following Members were appointed to the Commission (in order of appointment): Deputy President Masson, Deputy President Beaumont and Deputy President Millhouse.

During 2017-18, Commissioner Roe, Commissioner Ryan and Deputy President Gooley retired.

The panel system

The Commission allocates work predominantly through a panel system overseen by the President. The panel system seeks to ensure that matters are dealt with efficiently by Members with experience and expertise in particular areas.

At 30 June 2018, the Commission had eight panels:

- major resources/infrastructure projects
- government and recreational services
- manufacturing and building industry
- transport, agriculture, mining and services
- organisations
- termination of employment
- anti-bullying
- expert panel for the annual wage review.

For more information on the panel system, see Appendix A and 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).

About the Commission (cont.)

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, headed by Louise Clarke, 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, headed by Ailsa Carruthers, is responsible for corporate governance and reporting, legal services, financial management and resources, internal communications, human resources and information technology.

Tribunal Services, headed by Murray Furlong, 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—sharing international perspectives on dispute resolution

On 1 November 2017 the Commission hosted the International Perspectives on Dispute Resolution Conference in Melbourne. This public conference is part of a wider series of meetings and events for the heads of international workplace relations and dispute resolution agencies, and was hosted by Australia for the first time in a decade.

The international guests included:

- Sir Brendan Barber, Chair, Advisory, Conciliation and Arbitration Service Council, United Kingdom
- Mr Scot Beckenbaugh, Deputy Director, Federal Mediation and Conciliation Service, United States of America
- Ms Oonagh Buckley, Director General, Workplace Relations Commission, Republic of Ireland
- Mr Cameron Morajane, Director, Commission for Conciliation, Mediation and Arbitration, South Africa
- Ms Ginette Brazeau, Chairperson, Canada Industrial Relations Board, Canada
- Ms Cara Takitimu, National Dispute Resolution Manager, Ministry of Business, Innovation and Employment, New Zealand.

The conference was facilitated by Dr Marian Baird AO, Professor of Gender and Employment Relations at the University of Sydney, and brought together local and international heads of workplace relations and dispute resolution agencies to discuss developments and innovations in practice. They were joined by leading local academics and experts who reflected on Australia's progress in areas including online dispute resolution, user design and interest-based negotiation.

The conference featured presentations and panel sessions on topics including dispute resolution, equal remuneration, user design and stakeholder engagement.



Justice Iain Ross AO presenting to the International Perspectives on Dispute Resolution Conference in Melbourne on 1 November 2017

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- 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



2 Performance

Performance snapshot



27 Days

Median time from lodgment to conciliation in unfair dismissal applications



Completed annual wage review

1 June 2018



76 Days

Median time for agreement finalisation



32 Days

Median time for agreement approval without undertakings

Operational performance



31,554

Applications lodged



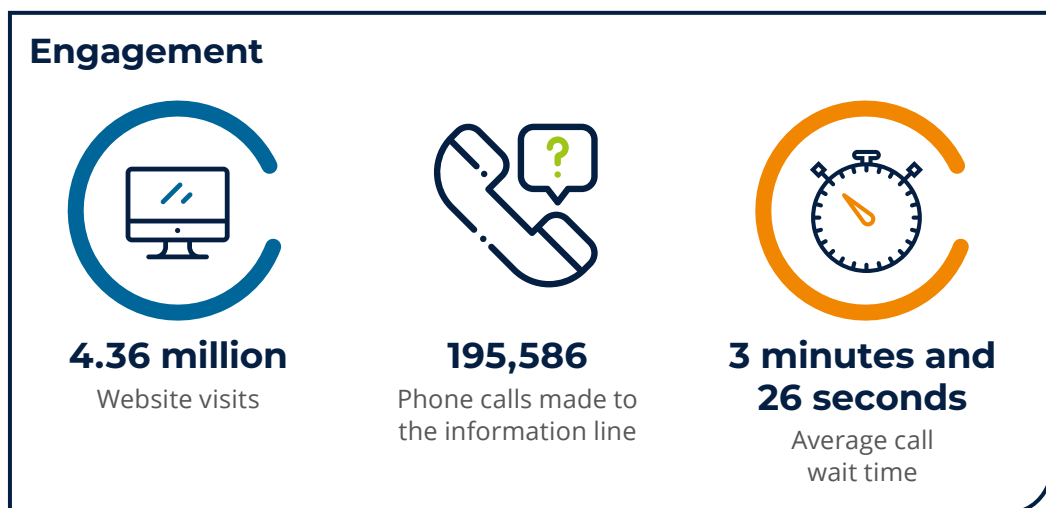
11,196

Hearings and conferences held

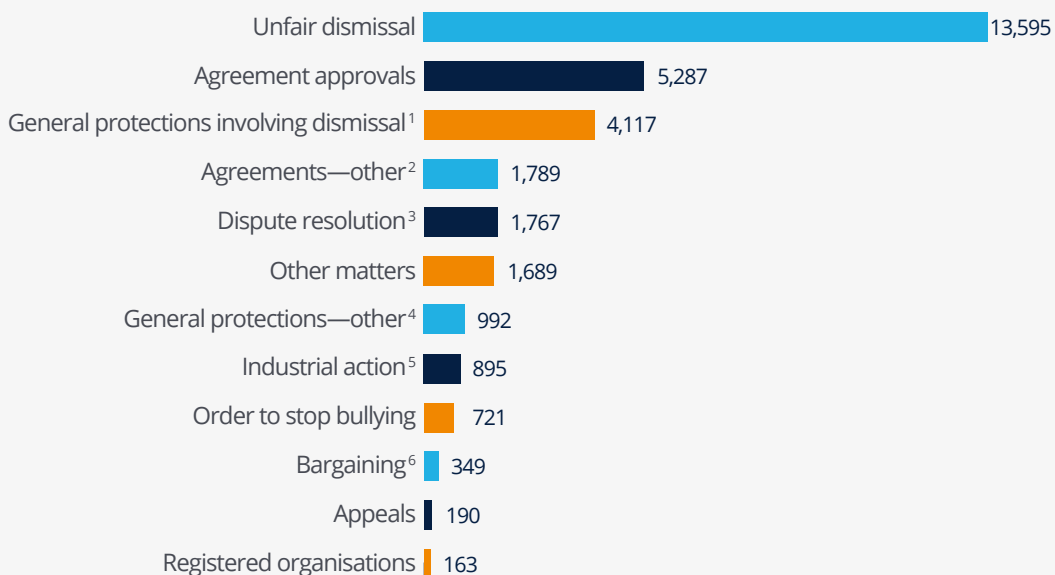


9,717

Decisions and orders published



Types of applications lodged



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

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

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

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

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

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

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 our website.

Applications

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

In 2017–18, a total of 31,554 applications were lodged with the Commission, a decrease of 5 per cent compared with a total of 33,071 in 2016–17. Table 1 summarises the number of applications lodged according to matter type from 2014–15 to 2017–18; more detail on lodgments in 2017–18 is in Table D16 in Appendix D.

In 2017–18, unfair dismissal applications were the most common, making up approximately 43 per cent of total applications, as in 2016–17. Consistent with previous years, applications for approval of an enterprise agreement were the second most common, making up 17 per cent of total applications. Applications for general protections involving dismissal made up 13 per cent of total applications in 2017–18.

There was a notable but expected drop, of 87 per cent, in the number of applications concerning registered organisations. This relates to the commencement of the Registered Organisations Commission in the previous reporting period. Most of the General Manager's powers and functions concerning registered organisations transferred to the Registered Organisations Commission on 1 May 2017.



Table 1: Applications lodged, by matter type

Matter type	2017–18	2016–17	2015–16	2014–15
Unfair dismissal	13,595	14,135	14,694	14,624
Agreement approvals	5,287	5,698	5,529	5,922
General protections involving dismissal ¹	4,117	3,729	3,270	3,382
Agreements—other ²	1,789	1,180	1,335	1,469
Dispute resolution ³	1,767	2,106	2,194	2,331
General protections—other ⁴	992	937	940	993
Industrial action ⁵	895	797	1,272	957
Order to stop bullying	721	722	734	694
Bargaining ⁶	349	399	408	479
Appeals	190	237	283	336
Registered organisations	163	1,243	1,472	1,120
Other matters	1,689	1,888	2,084	1,845
Total	31,554	33,071	34,215	34,152

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

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

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

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

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

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

Hearings and conferences

In 2017–18, the Commission held 11,196 hearings and conferences around Australia, a reduction of 29 per cent compared with a total of 15,804 in 2016–17.

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 in chambers.

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 2017–18, 32 per cent of all hearings and conferences conducted by Members were held by telephone or videoconference, up from 27 per cent in 2016–17.

Delivery of Commission services (cont.)

Twenty one 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 10,491 conciliation conferences during 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 2017–18, the Commission issued a total of 9,717 decisions and orders, a decrease of 12 per cent from 2016–17, 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 improvement that provide transparency and accountability.

The following graphics compare the Tribunal's performance against benchmarks in 2017–18 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

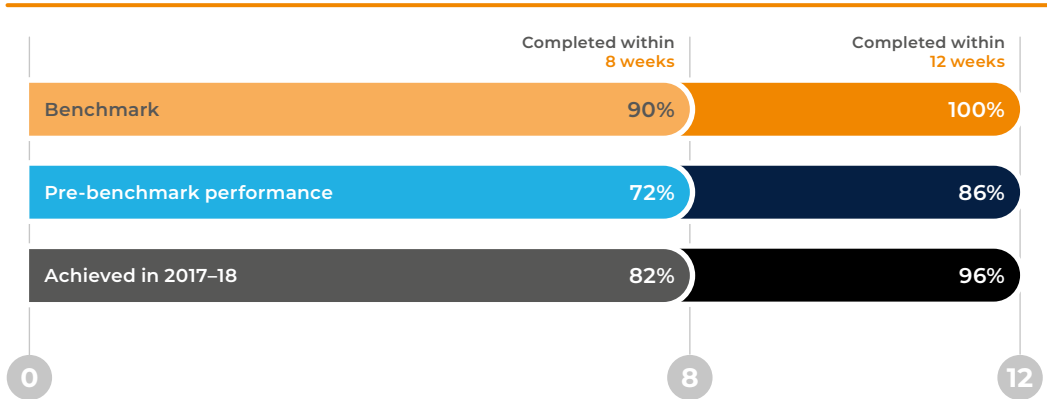
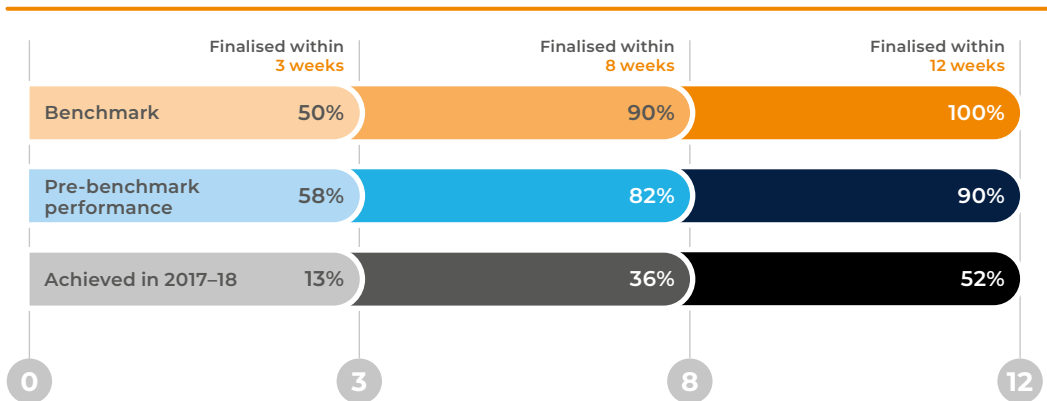


Figure 3: Timeliness benchmarks—agreements



Delivery of Commission services (cont.)

Figure 4: Timeliness benchmarks—appeals

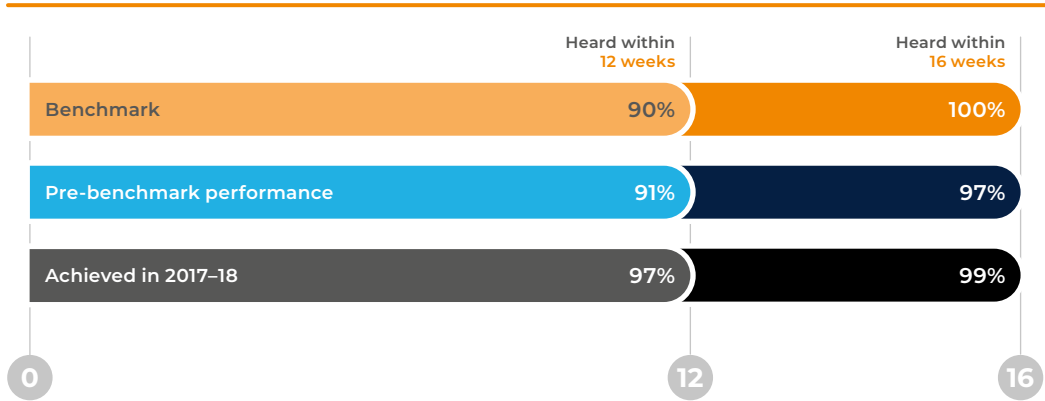
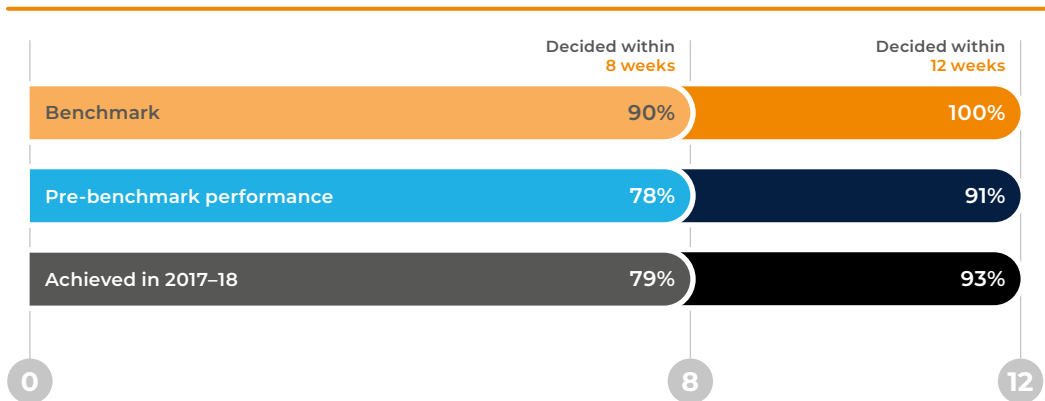


Figure 5: Timeliness benchmarks—reserved decisions in appeals





In focus—placing users at the centre of service delivery

The Commission's approach places users at the centre of initiatives to improve service delivery. In 2017-18, we undertook a range of user experience research projects and sought feedback and ideas about how services could better meet user needs. The research projects complement and build on earlier initiatives.

Unfair dismissal user experience research

The Commission engaged Cube Group, specialist user experience practitioners, to conduct user experience workshops with self-represented employers from small and medium-sized enterprises (with fewer than 50 employees) and self-represented applicants. The focus of the research was to provide useful, specific and practical insights about the Commission's unfair dismissal case management process.

The report is available on the Commission's website at www.fwc.gov.au.

Working better for small business consultation program

The Commission engaged Mr Bruce Billson of Agile Advisory to consult with small business operators and their representatives about how our procedures and resources might better meet the needs of small business.

The report is available on the Commission's website at www.fwc.gov.au.

What's Next

The two reports provided valuable insights and suggestions as to how to improve the Commission's services. Shortly after the reporting period the Commission launched *What's Next*, setting out the changes we will make in 2018-19 to improve access and reduce complexity for our users.

The *What's Next* plan is available on the Commission's website at www.fwc.gov.au.

Unfair dismissal client service survey

The Commission engaged Wallis Consulting Group to survey unfair dismissal client experiences encompassing all elements and stages of the case management process.

The survey was launched in October 2017 to invite feedback and ideas from unfair dismissal applicants, respondents and representatives. Further surveying took place in May 2018.

Delivery of Commission services (cont.)

More than 2,300 participants—approximately 1,000 unfair dismissal applicants, 1,000 employer respondents to unfair dismissal applications and 300 representatives of parties to unfair dismissal matters—volunteered to share their experiences and ideas. Participants were able to complete the survey online or by telephone.

In 2018–19, findings from the survey will be used and reported in a range of ways to benchmark and monitor service performance and help to develop new and improved practices and resources.

**In focus—looking ahead to our new case management system**

In 2017–18, the Commission designed and built a new case management system to replace our outdated online lodgment facility. The new system, eCase, is a quick, simple tool that allows employees, employers and their representatives to access information about their case at any time and from any device. They can upload their information, download information from other parties, check the progress of their case and receive SMS reminders of upcoming key events and due dates. A scheduling ‘engine’ named FairTasker will enable cases to be scheduled taking into account the needs of participants, the availability of interpreter services, case urgency and resourcing considerations. Employees and employers will have a greater say about when unfair dismissal conciliations are scheduled, with parties able to identify dates that are not suitable before the case is scheduled.

eCase will be launched in 2018–19 and will continue to be enhanced as we move into the next phase of design and development.

Unfair dismissals



13,595

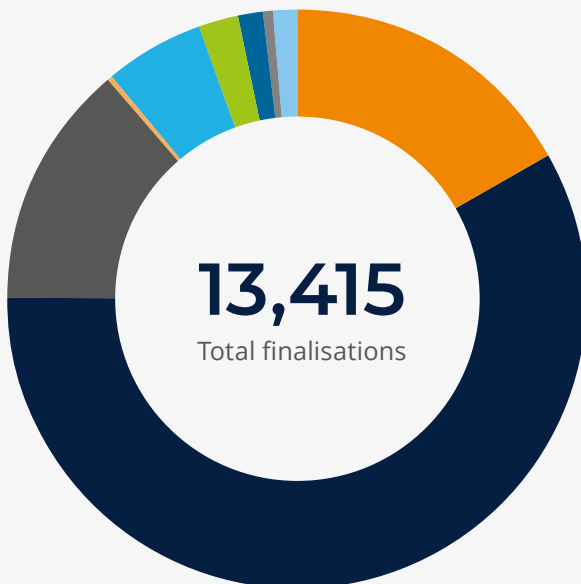
Applications lodged



13,415

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

Unfair dismissals (cont.)

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).

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.

In line with the Fair Work Act, the Commission's processes are quick, flexible and informal, and balance the needs of employers and employees. 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 and a benchbook outlining processes and important decisions.

Performance overview

In 2017–18:

- 13,595 unfair dismissal applications were lodged
- 99 per cent of applications (13,415) were finalised, with 50 per cent finalised within 31 days and 90 per cent within 90 days
- the median number of days to a staff conciliation was 27 days from lodgment, well within the target of 34 days
- 79 per cent of applications conciliated by staff (8,285) were resolved by the parties
- 6 per cent of applications (779) were resolved by the Tribunal, through a final decision or order.

The website received 367,348 page views regarding unfair dismissal; 123,773 page views or downloads of the unfair dismissal benchbook; 23,793 views of the unfair dismissal virtual tour; and 79,168 views of the online eligibility quiz for unfair dismissal applications. Staff answered 19,376 telephone enquiries concerning unfair dismissal.

Performance discussion

In 2017–18, the Commission received 13,595 unfair dismissal applications, as shown in Table 2. This represents 43 per cent of total applications lodged in 2017–18.

While the number of lodgments was virtually unchanged between 2014–15 and 2015–16, in each of the last two reporting periods there has been a modest decrease of 4 per cent in the number of unfair dismissal applications lodged.

Table 2: Unfair dismissal—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.394—Application for unfair dismissal remedy	13,595	14,135	14,694	14,624	13,415	14,587	15,028	15,177

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.



Commissioner Wilson with WEstjustice Community Legal Centre train the trainer program participants and Commission staff in Melbourne

Finalisation of cases

Consistent with results in previous years, a large majority of unfair dismissal applications were finalised without a formal hearing—18 per cent were either resolved or discontinued before staff conciliation, 62 per cent were resolved at conciliation and 14 per cent were resolved after conciliation but before a formal hearing.

Of the total unfair dismissal applications finalised in 2017-18, only 1 per cent (159) were resolved by a decision of a Member that the dismissal was harsh, unjust or unreasonable. This was consistent with results in previous years.

Overall, 6 per cent of unfair dismissal matters were finalised by a decision or order issued by a Member in 2017-18. In those 779 matters, the dismissal was found to be harsh, unjust or unreasonable in 20 per cent of cases, compared with 18 per cent in 2016-17.

Table 3 sets out how unfair dismissal matters were finalised in 2017-18.



Table 3: Unfair dismissal—finalisation of matters

Outcome	2017-18	2016-17	2015-16	2014-15
Resolved before conciliation	2,379	2,425	2,130	2,156
Resolved at conciliation	8,285	8,880	8,529	8,788
Resolved after conciliation and before a formal hearing	1,935	2,218	2,808	2,654
Resolved after hearing and before decision	37	36	104	52
Finalised by decision	779	1,028	1,457	1,527
Finalised by administrative dismissal	321	320	362	288
Finalised: jurisdiction objection upheld	195	401	769	890
Finalised at arbitration: application dismissed	104	125	130	161
Finalised at arbitration: application granted	159	182	196	188
Total finalisations	13,415	14,587	15,028	15,177
Applications granted, as a proportion of total decisions	20%	18%	14%	12%
Applications granted, as a proportion of finalisations	1%	1%	1%	1%

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 2017-18, a conciliation conference was held in 10,491 matters. The parties resolved the matter by agreement in 79 per cent of cases.

As well as resolving their unfair dismissal application, the parties sometimes 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 2017-18, 62 per cent (5,171) of conciliation resolutions involved both monetary and non-monetary items; 20 per cent (1,650) were resolved on a purely non-monetary basis; and 1 per cent (60 conciliations) resulted in an employee being reinstated.

Unfair dismissals (cont.)

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 (5,512)—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 2017–18, the Commission heard 268 matters in which one or more objections were raised by the employer. Of those matters, 73 per cent (195) 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 73 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 32 per cent of cases (23 matters).



Significant decision—is an Uber driver an employee?

In an example of a decision which considered a jurisdictional objection, the Commission found that an Uber driver is not an employee. As a result, the Uber driver's unfair dismissal application was dismissed by the Commission. You can read the decision in *Kaseris v Rasier Pacific V.O.F.* at [2017] FWC 6610.

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 decision 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 panel head for determination.

In 2017–18, the Commission dismissed a total of 321 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 70 matters that were dismissed by a panel head under s.587 of the Fair Work Act, in 40 per cent of cases (28 matters) the employee had not met the minimum employment period, and in 63 per cent of cases (44 matters) the application was incomplete or the applicant had not paid a filing fee or been granted a fee waiver.



Significant decision—when does a filing fee have to be paid?

The Commission decided that it can still consider an unfair dismissal application even if the filing fee was not paid at the same time as the application was lodged or within the 21-day time limit for lodging an unfair dismissal application. It found that the application was valid even though the employee emailed an application to the Commission on a Friday but the fee was not paid until the following Monday.

In the same case, the Commission also decided that it is not necessary for all of the attachments to an application to be received in order for it to be validly made. In this case, when the application was emailed on the Friday, two of the three attachments were missing. The missing attachments were not received until six days after the 21-day time limit. The Commission rejected the argument that the application was invalid because it was incomplete when it was lodged. You can read the decision in *Bonnar v Rail Industry Safety & Standards Board* at [2018] FWC 2151.

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.

In 2017–18, Members made 263 decisions about the merits of applications, which represented 2 per cent of all finalised unfair dismissal cases. In 40 per cent (104) of those decisions, the Member dismissed the application, determining that the dismissal had been fair.

In the remaining 60 per cent (159) of the applications that were considered on their merits, Members granted remedies for unfair dismissal in the large majority of cases.

Unfair dismissals (cont.)

The remedies were:

- monetary outcomes, in 69 per cent of cases (110 applications)
- reinstatement plus compensation for lost remuneration, in 11 per cent (17 applications)
- reinstatement without compensation for lost remuneration, in 4 per cent (six applications).

The median amount awarded as compensation in 2017–18 was \$6,971, which is the equivalent of 4.3 weeks' pay, as shown in Table D8 in Appendix D.

A remedy was not granted in 4 per cent of decisions (seven applications), and was yet to be determined at the end of 2017–18 in 12 per cent of decisions (19 applications).

Details of the decisions and remedies granted in 2017–18 are shown in tables D6 to D9 in Appendix D.

Timeliness

As shown in Table 4, the Commission met its portfolio budget statements key performance indicator for timeliness in 2017–18: a median of 34 days from lodgment of an unfair dismissal application to a staff conciliation conference. The median in 2017–18 was 27 days.

The overall time from lodgment to finalisation of matters improved in 2017–18, with unfair dismissal applications finalised in a median of 31 days and 90 per cent of matters finalised within 90 days of lodgment. This builds on the improved performance achieved in 2016–17.

Table 4: Unfair dismissal—timeliness

Process	Days elapsed							
	In 50% of matters				In 90% of matters			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.394—Unfair dismissal—lodgment to conciliation	27	34	34	28	37	44	54	42
FWA s.394—Unfair dismissal—lodgment to finalisation	31	37	42	35	90	102	123	133

FWA = Fair Work Act



Significant decisions—when can a party be represented by a lawyer or paid agent?

Under the Fair Work Act, a lawyer or paid agent must seek permission to represent a person before the Commission. This includes making an application or submission on someone else's behalf.

Few decisions have previously considered what it means to 'represent' a person for the purposes of s.596 of the Fair Work Act. In October 2017, a Full Bench found that permission is required if a 'shadow lawyer' substantially participates in a hearing. This is the case even if the lawyer does not speak on behalf of a party during a hearing.

In the unfair dismissal matter, the employer was represented by one of its employees (an employee relations specialist) but the employee was also assisted by a shadow lawyer from an external law firm. Although the lawyer did not speak during the hearing, the lawyer had substantially prepared the case for the employer, including drafting submissions, witness statements, questions for examination in chief and cross-examination and the 'forensic strategy' for the hearing. The employer also sought that the employee pay the legal costs it was charged for the lawyer's attendance at the hearing.

The Full Bench noted that permission is not generally required for a party to be represented for activities undertaken prior to, or outside, a conference or hearing. This includes the making of written applications and written submissions and the lodgment of documents and correspondence with the Commission. You can read the decision in *Stephen Fitzgerald v Woolworths Limited* at [2017] FWCFB 2797.

The Full Bench decision was subsequently considered in another unfair dismissal matter where an employee asked the Commission to rule that the employer could not obtain legal advice in the lead-up to a hearing. The Commission did not grant the order, distinguishing from Fitzgerald in finding that a party is not required to seek permission under the Fair Work Act or the Fair Work Commission Rules to obtain legal advice, even after an application is made to the Commission. You can read the decision in *Dr Neil Stringfellow v Commonwealth Scientific and Industrial Research Organisation T/A CSIRO* at [2018] FWC 1136.

General protections disputes involving dismissal



4,117

Applications lodged



4,358

Applications finalised

General protections disputes involving dismissal —finalisation of matters



- Application dismissed
- Dispute not resolved: certificate issued
- Dispute resolved at conciliation
- Extension of time (to apply) refused
- Withdrawn after conciliation
- Withdrawn before a conference
- Withdrawn before or after a conference or hearing to deal with extension of time

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 his or her 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 2017-18:

- 4,117 general protections applications involving dismissal were lodged
- 4,358 applications were finalised, of which 27 per cent were finalised with a certificate being issued
- 18 applications were made for consent arbitration, following a certificate being issued.

The website received 62,480 page views regarding general protections disputes, 52,595 page views or downloads of the general protections benchbook, and 27,765 visits to the online eligibility quiz page for general protections.

General protections disputes involving dismissal (cont.)

Performance discussion

The number of general protections applications involving dismissal increased by 10 per cent, to 4,117 in 2017–18 from 3,729 in 2016–17, as shown in Table 5. This followed a 14 per cent increase in 2016–17.

The total number of matters finalised increased by 22 per cent, to 4,358 in 2017–18 from 3,564 in 2016–17, following a 16 per cent increase in 2016–17. More cases were finalised than lodged in 2017–18, with a clearance rate of 106 per cent.

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 also increased, to 27 per cent of cases, compared with 25 per cent in 2016–17. The remaining 73 per cent of cases finalised in 2017–18 were resolved through Commission processes.

A total of 2,524 matters were resolved at or after a conciliation conference, representing 58 per cent of all cases finalised, as shown in Table 6.

Of the 3,688 cases dealt with by the Commission in conference in 2017–18, the dispute was resolved in 68 per cent of cases, as shown in Table 7. This is consistent with 2016–17, when 69 per cent of matters were resolved in conference.

For applications resolved at conciliation in 2017–18, outcomes included:

- monetary payments and non-monetary items, in 47 per cent of cases (1,185 applications).
- monetary payments only, in 29 per cent (721)
- non-monetary items only, in 22 per cent (546).

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 2017–18 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 1,164 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 18 matters (2 per cent), as shown in Table D11 in Appendix D. This is consistent with results for 2016–17, when parties in 23 matters (3 per cent of a total of 905) agreed to consent arbitration.

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

Matter type	No. lodged				No. finalised				Matter finalised	No. of matters			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15		2017-18	2016-17	2015-16	2014-15
FWA s.365—General protections disputes involving dismissal									Certificate issued	1,164	905	755	1,073
	4,117	3,729	3,270	3,382	4,358	3,564	3,060	3,475	Without certificate issued	3,194	2,659	2,305	2,402

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.

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

Outcome	No. of matters				Percentage of matters			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
Application dismissed	24	15	29	30	<1	<1	<1	<1
Dispute not resolved: certificate issued	1,164	905	755	1,074	27	25	25	31
Dispute resolved at conciliation	2,524	2,012	1,631	1,598	58	56	53	46
Extension of time (to apply) refused	60	98	99	56	1	3	3	2
Withdrawn after conciliation	72	71	83	126	2	2	3	4
Withdrawn before a conference	493	433	454	585	11	12	15	17
Withdrawn before or after a conference or hearing to deal with extension of time	21	30	9	6	<1	1	<1	<1
Total	4,358	3,564	3,060	3,475	100	100	100	100



Table 7: General protections disputes involving dismissal—conciliation outcomes

Outcome	No. of matters			
	2017–18	2016–17	2015–16	2014–15
Matters settled	2,524	2,012	1,631	1,599
Dispute resolved: monetary	721	646	576	567
Dispute resolved: monetary and non-monetary items	1,185	894	614	484
Dispute resolved: non-monetary items only	546	430	344	214
Dispute resolved: details unknown	72	42	97	334
Matters not settled	1,164	905	755	1,074
Total	3,688	2,917	2,386	2,673

Timeliness

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

There was a similar improvement of 23 per cent in the timeliness of the finalisation of general protections disputes involving dismissal, with cases finalised in a median of 48 days in 2017–18, compared with a median of 62 days in 2016–17.

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	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.365—General protections disputes involving dismissal—lodgment to conciliation	40	58	45	31	61	75	68	62
FWA s.365—General protections disputes involving dismissal—lodgment to finalisation	48	62	50	37	97	103	103	97

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 he or she has 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 2017-18:

- 902 general protections applications not involving dismissal were lodged
- 857 applications were finalised, of which 39 per cent were resolved through the Commission's conciliation process.

Performance discussion

The number of general protections applications not involving dismissal increased by 9 per cent, to 902 in 2017-18 from 828 in 2016-17. The 2017-18 total was also higher than the totals in 2014-15 and 2015-16, as shown in Table 9.

Of the 857 applications finalised in 2017-18, 23 per cent were withdrawn or were invalidly made, as set out in Table 10. In a further 11 per cent of cases, the employer did not agree to participate in a Commission conference.

Of the remaining 564 matters, which were dealt with by a Member in conference, the dispute was resolved through Commission procedures in 60 per cent of cases. This is consistent with 2016-17, when 59 per cent of matters (312) that were dealt with by a Member in conference were resolved.

Table 9: General protections disputes not involving dismissal—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.372—General protections disputes not involving dismissal	902	828	859	879	857	787	842	837

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			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
Application withdrawn	196	191	221	250	23	24	26	30
Invalid application	4	3	8	7	<1	<1	1	1
Employer declined to participate in a conference	93	68	73	69	11	9	9	8
Finalised by a Member—dispute not resolved	228	213	231	203	27	27	27	24
Finalised by a Member—dispute resolved	336	312	309	308	39	40	37	37
Total	857	787	842	837	100	100	100	100

Timeliness

In 2017–18, 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 26 days, with 90 per cent of first conferences held within 50 days. This was a slight 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) within a median of 30 days from lodgment in 2017–18, one day longer than in 2016–17. While it took longer for 90 per cent of matters to be finalised in 2017–18 than in 2016–17, timeliness in 2017–18 was consistent with performance in 2015–16 and an improvement on 2014–15.

General protections disputes not involving dismissal (cont.)**Table 11: General protections disputes not involving dismissal—timeliness**

Process	Days elapsed							
	In 50% of matters				In 90% of matters			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.372—General protections disputes not involving dismissal—lodgment to first conference	26	23	27	29	50	48	54	55
FWA s.372—General protections disputes not involving dismissal—lodgment to finalisation	30	29	34	38	108	94	107	120

FWA = Fair Work Act

**In focus—improving access to legal services**

Since 2012, the Commission has implemented various initiatives to promote fairness and improve access to justice, particularly for those who do not have legal representation. Building on this, the Commission is combining initiatives to create one national program—the Workplace Advice Service.

Existing initiatives

The Commission's activities to improve access to justice include:

- the Workplace Advice Clinics and the Pro Bono Program, which have together provided free legal services to hundreds of people involved in unfair dismissal matters who may not otherwise have been able to obtain such assistance—after successful pilot projects, both programs were made permanent features of our access to justice initiatives
- the Justice Connect General Protections Referral Pilot Program, which has made free legal advice about general protections matters available to eligible self-represented people in New South Wales and the Australian Capital Territory
- the Outside Sitting Hours pilot, in which the Commission has held hearings and conferences about unfair dismissal matters outside standard business hours, to provide greater flexibility, particularly for small business.

These programs have consistently received positive feedback and are highly valued, providing valued legal assistance to employees and employers who would otherwise not have access to such assistance.

Workplace Advice Service

The Commission's new program, the Workplace Advice Service, has the potential to reach thousands of self-represented individuals and small business owners who, for a variety of reasons, have been unable to access legal services.

The service will be delivered in partnership with leading community legal centres, legal aid bodies, law firms and legal practitioners across Australia. It will commence in Sydney and Melbourne, and expand across the country throughout 2018 and 2019.

The Workplace Advice Service will provide self-represented individuals and small business employers with up to one hour of free legal advice and assistance from a qualified practitioner in relation to unfair dismissal, general protections and anti-bullying matters. Advice will be available early in the process, before an application is lodged, and prior to a conciliation in unfair dismissal, general protections and anti-bullying matters. On occasions, practitioners may decide to provide further services at their discretion, including continuing support and representation at hearings.



Anti-bullying



721

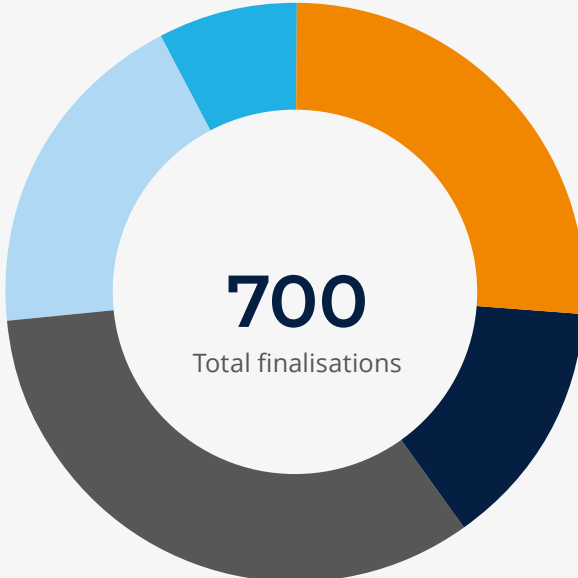
Applications lodged



700

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 panel head.
- 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.

The anti-bullying jurisdiction allows a worker who believes that he or she (or a group that he or she belongs 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 he or she considers appropriate to prevent the behaviours continuing; however, the Commission cannot order reinstatement, compensation or a monetary amount.

Performance overview

In 2017-18:

- 721 applications for an order to stop bullying were lodged
- 700 applications were finalised, of which 8 per cent (53) were resolved by the Commission issuing a decision or order.

The website received 172,005 hits regarding anti-bullying, 45,130 page views or downloads of the anti-bullying benchbook, 19,007 views of the anti-bullying virtual tour, and 13,047 page views of the online eligibility quiz for anti-bullying applications. Staff answered 6,098 telephone enquiries concerning anti-bullying.

Performance discussion

The numbers of anti-bullying applications and outcomes have been fairly consistent since the jurisdiction commenced on 1 January 2014, as shown in Table 12.

Anti-bullying (cont.)**Table 12: Anti-bullying—applications lodged and finalised**

Matter type	No. lodged				No. finalised			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.789FC—Anti-bullying	721	722	734	694	700	695	705	676

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 700 applications for an order to stop bullying were finalised in 2017-18. Table 13 sets out how the anti-bullying matters were finalised during the year. Consistent with results in previous years, a large majority (92 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	2017-18	2016-17	2015-16	2014-15
Applications withdrawn early in case management process ¹	183	171	237	185
Applications withdrawn before proceedings ²	97	125	115	122
Applications resolved during the course of proceedings ³	234	188	191	191
Matters withdrawn after a conference or hearing and before decision	133	151	110	118
Applications finalised by decision	53	60	52	60
Total	700	695	705	676

1 Applications withdrawn before substantive proceedings—while the matter is with the case management team or panel head.

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 53 applications that were finalised by decision in 2017-18. An order to stop bullying was made in eight substantive applications, which represents 1 per cent of the finalised cases, consistent with results in previous years.

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 2017–18, 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. As in previous years, the Commission started to deal with all applications well within the 14-day limit—the longest time taken in 2017–18 was five days. This reflects the high levels of support and resourcing that the Commission allocates to this jurisdiction.

Table 14: Anti-bullying—timeliness

Process	Days elapsed							
	In 50% of matters				In 100% of matters			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.789FC—Anti-bullying—time to start dealing with an application	1	1	1	1	5	6	5	9

FWA = Fair Work Act



Significant decision—orders for a mutually safe and productive workplace

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. If a finding is made, a Member may make any order he or she considers appropriate to prevent the behaviours continuing.

In this matter the Commission considered six allegations of unreasonable behaviour and found that four met the definition of bullying. The Commission decided that there was a likelihood that the unreasonable behaviour would continue and there was some risk that it could create a risk to health and safety; however, it was also found that the applicant was partly responsible for the ongoing nature of the behaviour.

Given these findings, the Commission issued orders to prevent future behaviours, which included the provision of anti-bullying and positive communication training to all individuals involved in the application, including the applicant. You can read the decision in *Burbeck v Alice Springs Town Council; Georgina Davison; Skye Price; Clare Fisher* at [2017] FWC 4988.

Unlawful termination disputes



90

Applications lodged



88

Applications finalised

Unlawful termination disputes—finalisation of matters



- Certificate issued
- Without certificate issued

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 2017–18:

- 90 unlawful termination applications were lodged
- 88 applications were finalised, of which 77 (88 per cent) were resolved by the Commission's conference process without a certificate being issued.

Performance discussion

The number of unlawful termination applications decreased by 17 per cent, to 90 in 2017–18 from 109 in 2016–17. As shown in Table 15, the small total was consistent with numbers of applications lodged in each of the past four years.

The Commission finalised 88 unlawful termination applications in 2017–18. In 12 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 was consistent with 2016–17, when a certificate was issued in 11 per cent of cases.

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

Matter type	No. lodged				No. finalised				Matter finalised	No. of matters			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15		2017-18	2016-17	2015-16	2014-15
FWA s.773—Unlawful termination	90	109	81	114	88	111	82	120	Certificate issued	11	12	10	15
									Without certificate issued	77	99	72	105

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

The median time elapsed from application lodgment to the Commission's first conference with parties to an unlawful termination dispute has steadily improved over the past four reporting periods, as shown in Table 16. Similarly, the Commission held its first conference within 44 days in 90 per cent of matters in 2017-18, 11 days earlier than in 2016-17 and 19 days earlier than in 2015-16.

The majority of unlawful termination applications are withdrawn by the employee—of the 88 cases finalised in 2017-18, more than 50 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.

In 2017-18, unlawful termination cases were finalised in a median of nine days from lodgment. This was four days earlier than in 2016-17 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			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.773—Unlawful termination—lodgment to first conference	22	24	30	39	44	55	63	67
FWA s.773—Unlawful termination—lodgment to finalisation	9	13	20	35	45	63	87	131

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 2017–18 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:

the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth.

Decision

On 1 June 2018, the panel issued its decision to:

- award an increase to the national minimum wage of 3.5 per cent to \$719.20 per week, or \$18.93 per hour based on a 38-hour week—this is an increase of \$24.30 per week or 64 cents per hour
- increase all modern award minimum wages and most transitional instrument wages by 3.5 per cent.



The panel's determinations came into operation on 1 July 2018 and took effect from the first full pay period on or after that date.

You can read the decision at [2018] FWCFB 3500 or the summary on our website at <https://www.fwc.gov.au/awards-agreements/minimum-wages-conditions/annual-wage-reviews/annual-wage-review-2017-18/decisions>.

Timeliness

The 2017-18 Annual Wage Review decision was issued on 1 June 2018, 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 2018, 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

The Fair Work Act requires the Commission to review all modern awards once every four years. The first 4 yearly review began in February 2014 and is expected to be completed by the first quarter of 2019.

The review's initial stage considered jurisdictional issues. Having dealt with those matters, the Commission is reviewing 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 2017-18, the Commission:

- held 167 hearings, conferences or mentions
- issued 52 decisions and 72 statements
- posted 4,236 documents to its website
- sent 452 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. Having previously divided awards into four groups, in 2017-18 the Commission published exposure drafts for 40 awards allocated to group 4 and

Wages and conditions (cont.)

continued to refine the exposure drafts for the awards in groups 1, 2 and 3. The review of the majority of awards in groups 1, 2 and 3 is substantially complete.

In 2017–18, Full Benches of the Commission made decisions on a range of technical and drafting issues which will affect all four groups of awards. Determinations dealing with claims for substantive changes to modern award entitlements during 2017–18 covered issues such as classifications and commission-only employment under the Real Estate Industry Award 2010, and coverage of the vehicle relocation industry under the Road Transport and Distribution Award 2010.

Plain language drafting

Producing awards in plain language aims to remove ambiguity and make awards simpler and easier to understand—an employer or employee should be able to read an award without needing a history lesson or paid advocate to interpret how it is to apply in the workplace.

The Commission prepared plain language drafts of award-specific clauses in modern awards in 2017–18, as well as continuing to redraft the Pharmacy Industry Award 2010. This process began in 2015–16, when the Commission conducted a pilot to create a plain language draft of the award, including using a plain language drafting expert and incorporating feedback from industrial parties and users. In 2017–18, the Commission produced a number of revised exposure drafts, statements and decisions narrowing the outstanding issues.

The first tranche of plain language drafting covers the Clerks—Private Sector Award 2010, the Hospitality Industry (General) Award 2010, the Restaurant Industry Award 2010, and the General Retail Industry Award 2010. These awards were selected due to high levels of award reliance in the industries or occupations they cover, particularly among small businesses. Exposure drafts have been published for each of the awards and consultation is ongoing.

The second tranche, which covers 10 awards, commenced in 2017–18 with the redrafting of the Cleaning Services Award 2010 and the Security Services Award 2010. The redrafting of the Fast Food Industry Award 2010 and the Hair and Beauty Industry Award 2010 will commence in 2018–19. The plain language drafting of the remaining six awards will be considered when substantive award-specific claims have been dealt with.

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.

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 additional common issue identified in 2017–18—overtime for casuals.

Significant events occurred in relation to the following common issues in 2017-18:

- abandonment of employment—In January 2018, the Commission published a decision determining that the ‘abandonment of employment’ provisions in six modern awards were not terms permitted or required to be included in a modern award. The Commission sought submissions from interested parties about the type of provision that might replace those terms.
- casual and part-time employment—In July 2017, the Commission published a decision proposing a model for a casual conversion clause. The decision also expressed a provisional view that a two-hour minimum engagement period should be included in modern awards that do not currently contain a minimum engagement period, and dealt with a number of award-specific claims. A further decision was issued in November 2017 dealing with whether further hearings were required.
- family and domestic violence—The Commission determined that all employees (including casuals) should be entitled to five days of unpaid leave in the event that an employee needs to deal with the impact of family and domestic violence and it is impractical for them to do so outside their ordinary hours of work. A model term was published for comment in May 2018. The new entitlement will be incorporated into all modern awards in the first quarter of 2018-19. You can read a case study of the decision on page 58.
- family friendly working arrangements—The Commission rejected the Australian Council of Trade Unions’ claim for a right to access flexible working arrangements and a right to revert to former working hours. In March 2017, the Commission published a provisional model term, building on the existing right of an employee to request flexible working arrangements. It is expected that this matter will be finalised in the first quarter of 2018-19.
- blood donor leave—The Commission published a decision rejecting the claim to include an entitlement to paid blood donor leave in modern awards. Consideration of this matter is now complete.

The Social, Community, Home Care and Disability Services Industry Award 2010 was amended in response to the introduction of the National Disability Insurance Scheme (NDIS). The award was amended to clarify that a part-time work arrangement agreed between an employer and employee does not necessarily have to provide for the same guaranteed number of hours in each week. This provides the stability and predictability desired by the part-time employee, whilst allowing the part-time arrangement to meet the service requirements of particular NDIS plans.

Wages and conditions (cont.)**Case study—leave to deal with family and domestic violence**

As part of the 4 yearly review of modern awards, a Full Bench considered, and ultimately rejected, an application to create a new entitlement to 10 days of paid leave for employees experiencing family and domestic violence. While paid leave is not necessary as part of a fair and relevant safety net of terms and conditions, the Full Bench found that all employees are entitled to five days of unpaid leave each year.

Family and domestic violence is a community issue that requires a community response. The Full Bench found that:

- family and domestic violence has a significant adverse impact on those who experience it
- while men can, and do, experience family and domestic violence, such violence is a gendered phenomenon that disproportionately affects women
- the effects of family and domestic violence are far reaching and extend beyond the individual directly affected, to their families and the general community
- family and domestic violence has a real and tangible impact on employees and employers in the workplace
- employees who experience family and domestic violence often face financial difficulties as a result, such as relocation costs or becoming a sole parent; and may suffer economic harm as a result of disruption to workplace participation.

The Full Bench concluded that all award-covered employees should be entitled to five days unpaid leave to deal with family and domestic violence. Unpaid leave:

- will be available in full at the start of each 12-month period
- will not accumulate from year to year
- will be available in full to part-time and casual employees (and will not be pro-rated).

Having consulted with interested parties about drafting the new provision, the Commission is currently finalising the clause that will be inserted into all modern awards. It will require employees to provide notice when taking leave and will specify the evidence an employer might require. Employers will be required to keep information about leave confidential.

You can read the decision at [2018] FWCFB 1691.



Case study—application for equal remuneration for long day care and preschool workers

Three unions applied for an equal remuneration order for employees who work in long day care centres or preschools. The employees are covered by the Children's Services Award 2010, Educational Services (Teachers) Award 2010 and Educational Services (Schools) General Staff Award 2010.

Under s.302 of the Fair Work Act, the Commission may make an equal remuneration order to ensure that men and women workers receive equal remuneration for work of equal or comparable value.

The Commission can only grant an order if the two groups:

- perform work of equal or comparable value
- are of the opposite gender, and
- are unequally remunerated.

A Full Bench dismissed the application after finding that there was insufficient evidence presented to support the claim.

You can read the decisions at [2017] FWCFB 2690 and [2018] FWCFB 177.

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 those matters, one is outstanding. Finalisation of the last 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



5,287

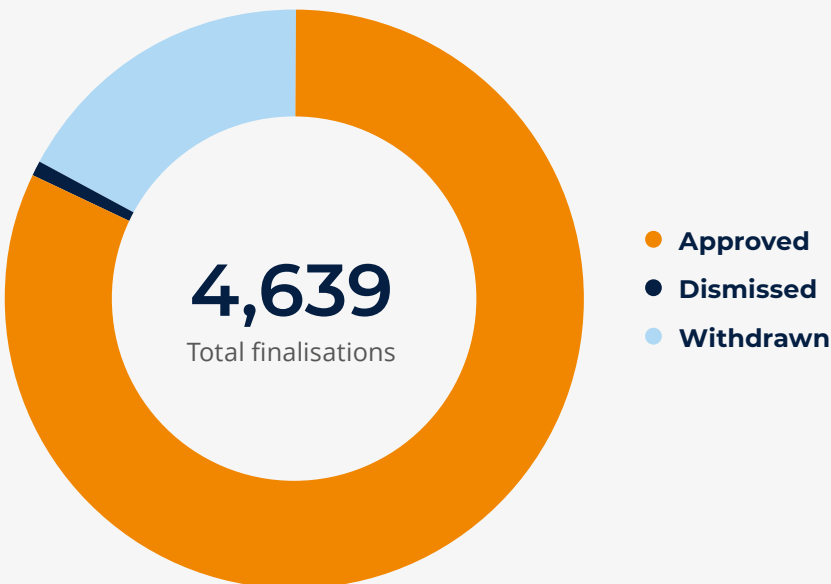
Applications lodged



4,639

Applications finalised

Enterprise agreements—finalisation of matters



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 which 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.

Performance overview

In 2017–18:

- 5,287 applications for approval of an enterprise agreement were lodged
- 4,639 agreements were finalised, of which 82 per cent (3,803) were approved, less than 1 per cent (42) were refused and 17 per cent (794) were withdrawn
- of the applications that were approved, 68 per cent (2,568) were approved with an undertaking.

Information and tools to assist parties making an enterprise agreement continued to be popular. In 2017–18, the website received:

- 978,121 page views regarding enterprise agreements and 12,130 downloads of the enterprise agreements benchbook
- 12,981 downloads of the step by step guide to making a single-enterprise agreement
- 5,530 downloads of Guide: Notice of Employee Representational Rights

Enterprise agreements (cont.)

- 7,921 downloads of the single-enterprise agreement legislative checklist
- 7,015 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 by 7 per cent, to 5,287 in 2017–18 from 5,698 in 2016–17, as shown in Table 17.

Table 17: Enterprise agreements—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.185—Single-enterprise	5,102	5,474	5,238	5,449	4,476	5,391	5,153	5,523
FWA s.185—Greenfields	149	177	258	407	128	173	262	418
FWA s.185—Multi-enterprise	36	47	33	66	35	42	34	64
Total	5,287	5,698	5,529	5,922	4,639	5,606	5,449	6,005

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 2017–18, a total of 4,639 enterprise agreements were finalised, as shown in Table 17, of which 96 per cent were single-enterprise agreements, consistent with the proportion in 2016–17.

A total of 17 per cent of all finalised applications in 2017–18 were withdrawn, an increase from 13 per cent in 2016–17 and 11 per cent in 2015–16, as shown in Table 18.

Of the matters finalised in 2017–18, 82 per cent of enterprise agreements were approved.

Table 18: Enterprise agreements—finalisation of matters

Matter type	No. approved				No. dismissed				No. withdrawn			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.185— Single-enterprise	3,658	4,663	4,523	5,027	42	39	48	114	776	689	582	382
FWA s.185— Greenfields	118	162	252	399	0	0	1	2	10	11	9	17
FWA s.185— Multi-enterprise	27	33	26	55	0	0	4	1	8	9	4	8
Total	3,803	4,858	4,801	5,481	42	39	53	117	794	709	595	407

FWA = Fair Work Act

Table 19 sets out the numbers of agreements approved with and without undertakings over the past four reporting periods.

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

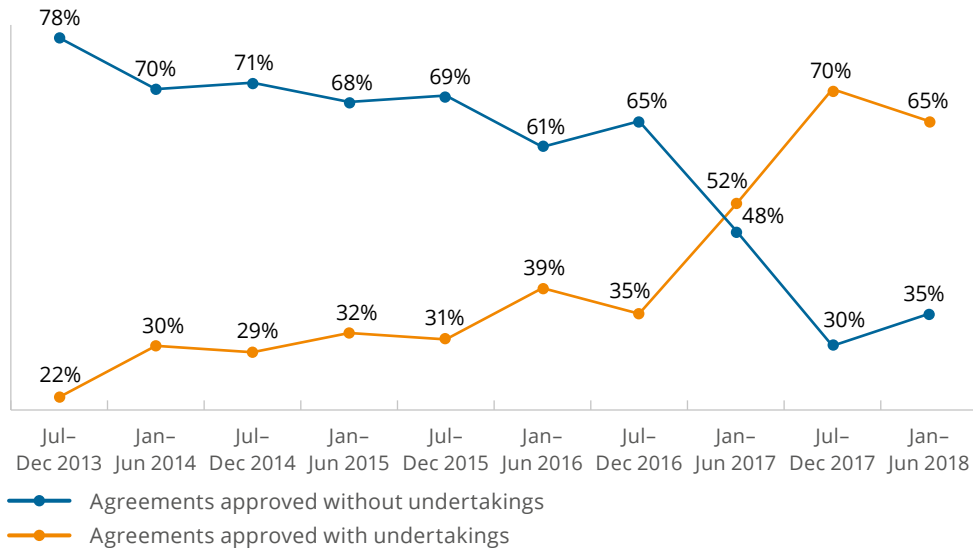
Matter type	No. approved without undertakings				No. approved with undertakings			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.185—Single-enterprise	1,159	2,701	2,890	3,433	2,499	1,962	1,633	1,594
FWA s.185—Greenfields	71	128	221	351	47	33	31	48
FWA s.185—Multi-enterprise	5	20	15	29	22	13	11	26
Total	1,235	2,849	3,126	3,813	2,568	2,008	1,675	1,668

FWA = Fair Work Act

Of the total agreements approved each year, the proportion of agreements approved with undertakings has risen steadily, from 30 per cent in 2014–15, to 35 per cent in 2015–16 and 41 per cent in 2016–17. In 2017–18, of the 3,803 that were approved, a higher proportion of agreements were approved with undertakings (68 per cent) than without (32 per cent). Figure 6 illustrates trends in agreement approvals, with and without undertakings, for each six month period from July 2013.

Enterprise agreements (cont.)

Figure 6: Enterprise agreements—agreements approved with and without undertakings



Timeliness

In 2017–18, the Commission took longer to deal with applications for approval of agreements than in previous years. As shown in Table 20, in 2017–18 the Commission did not meet its portfolio budget statement target of a median of 32 days, with a median time to finalise all agreement approvals of 76 days.

Table 20: Enterprise agreements—timeliness, finalisation of all applications

Matter type	PBS target (median days) ¹	Time to approve agreement (median days)			
		2017–18	2016–17	2015–16	2014–15
FWA s.185—Approval of enterprise agreement	32	76	32	18	21

FWA = Fair Work Act

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

As shown in Table 21, in 2017-18 single-enterprise and greenfields agreements were approved without undertakings in a median of 32 days. Where an undertaking was required, the median time for approval was 93 days for single-enterprise agreements and 54 days for greenfields agreements. Single-enterprise and greenfields agreements make up a total of 99 per cent (3,776) of all agreements approved in 2017-18, as shown in Table 18.

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)			
		2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.185—Single-enterprise	96%	32	15	15	17	93	48	27	31
FWA s.185—Greenfields	3%	32	13	11	13	54	43	21	26
FWA s.185—Multi-enterprise	1%	69	22	21	31	115	101	28	42

FWA = Fair Work Act

The Commission's performance against the timeliness benchmark of 50 per cent of agreements finalised within three weeks, 90 per cent within eight weeks, and 100 per cent within 12 weeks similarly declined, as shown in tables 22 and 23 and illustrated in Figure 6.

Table 22: Enterprise agreements—timeliness, approval of agreements

Matter type	Percentage of matters finalised								
	Within 3 weeks			Within 8 weeks			Within 12 weeks		
	2017-18	2016-17	Pre-benchmark	2017-18	2016-17	Pre-benchmark	2017-18	2016-17	Pre-benchmark
Benchmark ¹	50	50	N/A	90	90	N/A	100	100	N/A
FWA s.185—Agreement approval	13	37	58	36	81	82	52	95	90

FWA = Fair Work Act, N/A = not applicable

1 Benchmark set by the President.

Enterprise agreements (cont.)**Table 23: Enterprise agreements—timeliness, finalisation of single-enterprise agreements with and without undertakings**

Process	Percentage of matters finalised											
	Within 3 weeks				Within 8 weeks				Within 12 weeks			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
Benchmark ¹	50	50	50	50	90	90	90	90	100	100	100	100
Approved without undertakings	33	58	68	61	60	93	98	96	73	99	100	99
Approved with undertakings	4	9	40	32	25	67	90	81	43	91	98	94

FWA = Fair Work Act

1 Benchmark set by the President.

Timeliness discussion

The decline in the Commission's timeliness performance is attributable to a number of factors. The key contributor is the significant increase in applications identified as potentially not meeting the statutory requirements, indicated by the incidence of agreements requiring undertakings nearly tripling since 2013, as illustrated in Figure 6.

The Commission has adopted an increasingly rigorous approach to processing agreement approvals. Under an administrative triage process, all applications are analysed by a team of administrative staff using a checklist developed by senior Members. While staff undertake a preliminary analysis, the relevant statutory tests are applied by Members in determining whether to approve the agreement.

Where, on the face of the agreement and other information before the Commission, all of the statutory requirements are not met, the matter may be dealt with in a number of ways—the applicant may withdraw the application; the Commission may dismiss the application; or the Commission may approve the agreement with undertakings. Accepting an undertaking to address a deficiency in an agreement may avoid the more costly and time-consuming process of recommencing bargaining.

As a general proposition, the Commission takes longer to approve agreements with written undertakings. Before accepting an undertaking, the Commission must:

- seek the views of each known bargaining representative for the agreement
- be satisfied that the effect of accepting the undertaking is not likely to cause financial detriment to any employee covered by the agreement, or result in substantial changes to the agreement.

The Commission cannot accept an undertaking unless the effect of accepting it is not likely to result in ‘substantial changes’ to the agreement. Minor changes to an agreement resulting from an undertaking are permissible.

In addition to the increased use of undertakings, factors that adversely affected the timeliness in finalising enterprise agreements in 2017–18 included:

- an unanticipated, and largely unprecedented, spike in applications to approve agreements—in December 2017, the number of applications lodged was 50 per cent higher than the 2016–17 average
- an almost threefold increase in applications to vary agreements—602 applications were lodged in 2017–18, compared with 227 in 2016–17 (as set out in Table 24)
- a 29 per cent increase in the finalisation of applications to terminate agreements—384 applications were finalised in 2017–18, compared with 297 in 2016–17 (as set out in Table 25)
- evolving case law, including decisions of the Federal Court of Australia, as to how the statutory requirements, including the BOOT and pre-approval steps, are to be applied.
- the diversion of administrative resources to keep more than 300 agreement applications in abeyance while waiting for the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Bill 2017 to be passed.

In 2017–18, the Commission implemented various measures to improve timeliness and to assist parties to lodge compliant applications for approval. They included:

- increasing resources
- closely monitoring and reporting on performance
- improving administrative processes and introducing new tools and templates
- developing and publishing information materials to assist parties to make compliant applications
- introducing a dedicated email address to receive enquiries on applications lodged more than eight weeks earlier.

By the end of the reporting period, these measures were beginning to have a positive impact. For example, one of the most common defects in agreement approval applications is that the mandated notice of employee representational rights is not in the prescribed form, meaning that the application cannot be approved under the Fair Work Act. In early 2018, the Commission developed an online tool which enabled parties to generate a compliant notice. Since its introduction the incidence of applications lodged with a non-compliant notice reduced from nearly 20 per cent in June 2017 to less than 5 per cent.

There remains scope for further improvement. In the latter part of the reporting period, we undertook a process to hear directly from employers, unions and employer organisations about their experiences and ideas to improve our agreement approval processes. This research is generating further ideas to improve case management practices and information resources.



Acknowledging the substantial increase in non-compliant applications, which are more complex and take longer to deal with, on 1 July 2018 the Commission adopted revised timeliness benchmarks for the approval of single-enterprise agreements for the 2018–19 financial year.

For applications that are compliant at lodgment and can be approved without undertakings:

- 50 per cent are to be finalised within three weeks
- 100 per cent are to be finalised within eight weeks.

For applications that require undertakings or cannot be approved, contested applications, and applications requiring a hearing:

- 50 per cent are to be finalised within 10 weeks
- 100 per cent are to be finalised within 16 weeks.



Significant decision—will every worker be better off overall?

A Full Bench found that every employee or prospective employee covered by a proposed enterprise agreement must meet the ‘better off overall test’ (BOOT) under the proposed agreement compared with the relevant modern award. The proposed agreement will fail the BOOT if any current or prospective employee would not be better off overall.

The Full Bench was considering how to apply the BOOT to proposed agreements containing ‘loaded rates’—that is, higher hourly rates which are intended to incorporate penalty rates and other financial benefits set out in separate clauses in modern awards. In a proposed agreement containing loaded rates, it is not sufficient if even a very large majority of employees are better off overall.

The BOOT requires an overall assessment. The Commission must identify the terms in the proposed agreement that are both better and worse for an employee and make an overall decision about whether the employee is likely to be better off under the proposed agreement. While this decision is generally mathematical for wages, it is more complex where the proposed clauses concern benefits not directly related to money, benefits accessible at the employee’s choice, or financial benefits which rely on specific events occurring.

You can read the decision in *Loaded Rates Agreements* at [2018] FWCFB 3610.

Enterprise agreements (cont.)



Significant decision—when must the Commission approve an agreement?

For an agreement to be approved under the Fair Work Act, the Commission must be satisfied that the group of employees covered by the agreement was ‘fairly chosen’ and that it was ‘genuinely agreed’ to by employees ‘covered by the agreement’. The meaning of these terms was considered in an application to approve an agreement made with three maintenance workers prior to their employer winning a major mining contract.

The agreement stated that it covered employees engaged to work ‘in connection with’ the mining project, including preparatory work. The Full Bench decided that, in the context of this clause, it was not necessary for the employer to have won the mining contract for the three employees to be covered by the agreement; it was sufficient that they worked on a project aimed at securing, and preparing for, the mining contract.

You can read the decision about what it means to be ‘covered by the agreement’ in *Thiess Pty Ltd v Construction, Forestry, Mining and Energy Union* at [2017] FWCFB 2459.

The same Full Bench separately considered what it means for a group of employees to be ‘fairly chosen’ and to have ‘genuinely agreed’. The Full Bench decided that merely because the employer only has a small number of employees at the time the agreement is made and the negotiated agreement subsequently covers a much wider range of employees, it does not follow that the process was manipulated or that the employees were not ‘fairly chosen’.

The Full Bench also disagreed with an earlier finding that the employees had not ‘genuinely agreed’ as they did not benefit from voting for the agreement and had no stake or direct interest in the terms and conditions of the majority of employees who would potentially be covered. The employees clearly had an interest in the success of their employer’s business, with the agreement also providing beneficial wage rates and redundancy and rostering arrangements.

You can read the decision about the meaning of ‘fairly chosen’ and ‘genuinely agreed’ in *Thiess Pty Ltd v Construction, Forestry, Mining and Energy Union* at [2018] FWCFB 2405.

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 2017–18, 94 per cent of applications to vary agreements were made under s.210 of the Fair Work Act, as shown in Table 24. The number of applications made under s.210 was significantly higher than in previous years, increasing by 174 per cent, to 564 from 206 in 2016–17. 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* (Building Code 2016), which commenced in December 2016.

Table 24: Applications to vary enterprise agreements—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.210—Application for approval of a variation of an enterprise agreement	564	206	187	208	485	194	186	207
FWA s.217—Application to vary an agreement to remove an ambiguity or uncertainty	38	21	32	38	40	21	34	44
FWA s.218—Variation of an agreement on referral by the Australian Human Rights Commission	0	0	0	0	0	0	0	0
Total	602	227	219	246	525	215	220	251

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.

Enterprise agreements (cont.)**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 25 shows the numbers of applications to terminate an agreement that were lodged and finalised in 2017–18. The large majority of applications lodged (75 per cent) were made after the agreement's expiry date, under s.225 of the Fair Work Act. The number of applications in 2017–18 was around 30 per cent higher than in 2016–17 and 2015–16 and more than double the number in 2014–15.

Table 25: Applications to terminate enterprise agreements—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.222—Application for approval of a termination of an enterprise agreement	130	97	92	91	124	93	92	92
FWA s.225—Application for termination of an enterprise agreement after its nominal expiry date	388	303	311	161	384	297	310	135
Total	518	400	403	252	508	390	402	227

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 which is authorised or agreed to by the other party, or action based on a reasonable concern of an employee about an imminent risk to his or her 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 increased by 9 per cent, to 863 in 2017–18 from 794 in 2016–17, as shown in Table 26.

The Commission published an industrial action benchbook on its website in March 2017. In 2017–18, the benchbook was viewed or downloaded 25,881 times.

Industrial action (cont.)

Consistent with results in previous years, the most common types of applications lodged were applications for a protected action ballot order (67 per cent) and applications to extend the 30-day period in which industrial action is authorised by a protected action ballot (15 per cent). Applications for the variation or revocation of a protected action ballot order made up 9 per cent of cases in 2017–18, compared with 6 per cent in 2016–17.

In 2017–18, the Commission received 54 applications for an order to stop or prevent industrial action that is not (or would not be) protected industrial action. That total was higher than the 43 applications lodged in 2016–17 but just over half the number in 2014–15, indicating a significant decline in unprotected industrial action cases over a four-year period.

Table 26: Industrial action—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.418—Application for an order that industrial action by employees or employers stop etc.	54	43	67	107	51	49	61	108
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	2	1	0	2	0	1	0
FWA s.424—Application to suspend or terminate protected industrial action—endangering life etc.	9	8	14	16	9	8	14	16
FWA s.425—Application to suspend protected industrial action—cooling off	4	6	3	0	4	7	2	0
FWA s.426—Application to suspend protected industrial action—significant harm to third party	2	0	0	1	0	0	0	1
FWA s.437—Application for a protected action ballot order	579	537	960	641	583	537	962	648
FWA s.447—Application for variation of a protected action ballot order	27	7	21	6	27	7	21	6
FWA s.448—Application for revocation of a protected action ballot order	53	37	48	44	53	38	48	44
FWA s.459—Application to extend the 30-day period in which industrial action is authorised by protected action ballot	130	150	154	133	137	148	152	137
FWA s.472—Application for an order relating to certain partial work bans	4	4	4	7	6	2	4	7
Total	863	794	1,272	955	872	796	1,265	967

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 2017–18, the Commission either matched or improved on its performance in 2016–17, as set out in Table 27. During 2017–18, the Commission streamlined some of its administrative processes for protected action ballot orders, contributing to the reduction of one day in time take from lodgment to determination of applications for a protected action ballot order compared with 2016–17.

Table 27: Industrial action—timeliness, protected action ballot orders and orders to stop action

		Days elapsed							
		In 50% of matters				In 90% of matters			
Process	Key performance indicator	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.418—Application for an order that industrial action by employees or employers stop etc.—lodgment to first hearing	2 days	1	1	1	1	2	3	3	3
FWA s.437—Application for a protected action ballot order—lodgment to first hearing	5 days	4	4	4	3	7	8	8	9
FWA s.437—Application for a protected action ballot order—lodgment to determination	5 days	3	4	6	3	7	9	8	7

FWA = Fair Work Act



Significant decision—suspension of railway workers’ protected industrial action

In January 2018, workers at Sydney Trains and NSW Trains imposed overtime bans and advised that they were intending to take further protected industrial action by stopping work for 24 hours. The industrial action was taken in support of negotiations for new enterprise agreements. The Commission was satisfied that the 24-hour stop work would cause significant economic damage, and issued an order to suspend all protected industrial action for six weeks, giving the parties an opportunity to conclude their agreement negotiations.

The Commission heard evidence about safety risks and the impact of the proposed 24-hour stop work on workers, emergency services, students, tourists and the economy. Over one million railway journeys would not take place, with approximately 420,000 journeys in the morning peak and another 440,000 in the afternoon peak affected. The likely cost to the economy was significantly more than \$90 million. You can read the decision in *Sydney Trains; NSW Trains v The Hon. Dominic Perrottet, Minister for Industrial Relations (New South Wales)* at [2018] FWC 632.

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 2017–18:

- 1,630 applications in relation to disputes were lodged
- 1,617 applications (99 per cent), including 41 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 of the Fair Work Act.

The number of applications made under s.739 of the Fair Work Act decreased by 17 per cent, to 1,617 in 2017–18 from 1,940 in 2016–17, as shown in Table 28. This is consistent with a longer term decline, with the number of matters finalised decreasing by 23 per cent between 2014–15 and 2017–18.

Consistent with results in previous years, only a small number of applications in 2017–18 were lodged under s.526 of the Fair Work Act, and the number of applications made under the *Workplace Relations Act* continued to decline.

Table 28: Dispute applications—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.526—Application to deal with a dispute involving stand down	9	10	17	17	8	12	21	13
WRA s.699—Application to Fair Work Australia to have an alternative dispute resolution process conducted	0	0	1	2	0	0	1	2
WRA s.709—Application to Fair Work Australia to have a dispute resolution process conducted under a workplace agreement	4	6	11	37	3	6	17	41
FWA s.739—Application to deal with a dispute	1,576	1,888	2,001	2,078	1,542	1,695	1,932	2,019
FWA s.739—Application to deal with a dispute in relation to flexible working arrangements	41	52	32	41	36	45	34	40
Total	1,630	1,956	2,062	2,175	1,589	1,758	2,005	2,115

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 2017–18, the Commission held the first conference dealing with a dispute in a median of 19 days from lodgment of the application, and a conference was held within 48 days in 90 per cent of cases, as shown in Table 29. This represents a 12 per cent increase in the median number of days taken to deal with a dispute when compared with the results for 2016–17.

Table 29: Dispute applications—timeliness

Matter type	Days elapsed							
	In 50% of matters				In 90% of matters			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.739—Application to deal with a dispute—lodgment to first conference	19	17	16	16	48	43	42	45

FWA = Fair Work Act

New Approaches



Deputy President Anna Booth presenting at the International Perspectives on Dispute Resolution Conference in Melbourne on 1 November 2017

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 2018, the Commission was facilitating 29 active 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.

During 2017–18, Members conducted 12 New Approaches workshops in partnership with national and state and territory law councils and industrial relations societies. The workshops have a practical focus on improving the capacity of participants to bargain effectively and resolve conflict and disputes in the workplace.

The Commission is interested in measuring the impact of New Approaches, to identify the best ways to maximise cooperation and commitment among organisations that participate in the program. Having conducted a workshop in May 2018, in 2018–19 the Commission will work with the New Approaches User Group to design an evaluation methodology. The user group membership consists of a Commission Member and parties such as industrial officers and employer representatives who have participated in the New Approaches process.



Case study—New Approaches in tertiary education

Macquarie University and the National Tertiary Education Union (NTEU) have adopted interest-based bargaining in negotiating their latest enterprise agreement. This is the first time New Approaches has been adopted in the tertiary education sector.

As an independent body, the Commission has been in a position to assist the parties to move beyond positional bargaining, helping them to articulate their interests and the other side's point of view. Deputy President Booth, who is facilitating bargaining, believes the process will have an ongoing influence on how the university and union interact.

Both sides acknowledge the benefits of this process and the potential outcomes. Professor Stephen Brammer, Executive Dean of the Faculty of Business and Economics at Macquarie University, explained:

it's fair to say bargaining historically has been a sort of stylized form of trench warfare in which the University and the Union are in opposing trenches and where each construes the objective as getting as many metres of ground beyond the current agreement favourable for their side. The process has enabled us to see common ground and understand each other's interests.

New Approaches (cont.)

Dr Alison Barnes, President of the Macquarie University branch of the NTEU, noted:

the key difference has been that, rather than each side locking themselves into an intractable position from which they feel they can't move, there has been a greater focus on trying to look at each interest and how we might progress those issues in a productive fashion. Interest Based Bargaining has been a very robust process. It hasn't been conflict free. The process has pushed both sides to use imagination to look and listen to a range of perspectives and to look at issues and concerns in new and novel ways.

In facilitating the process between Macquarie University and the NTEU, Deputy President Booth explained:

In Interest Based Bargaining you don't begin with a log of claims and the defined positions of either party. You begin from what the shared and competing interests are. Then you generate a range of options or different ways in which those needs can be met and you can choose the best possible way to meet those needs.

Nicole Gower, head of Human Resources at Macquarie University, highlighted the process:

we've been much more creative and we've come up with options that we wouldn't have thought about going into the negotiations. That's really a testament to the collaborative nature of the process.

Lance Dale, Industrial Officer with the New South Wales division of the NTEU, noted that the parties may not necessarily agree on everything, but said:

I'm confident we will reach a very good agreement at the end of the day.

Having formally commenced in October 2017, the parties are continuing to negotiate, with the assistance of Deputy President Booth. They hope to conclude a new enterprise agreement before the end of 2018.



Bargaining representatives from Macquarie University and the National Tertiary Education Union negotiating for the replacement to the Macquarie University Academic Staff Enterprise Agreement 2014

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 2017–18, the Commission received 16 applications for matters dealt with by the organisations panel. Seven of those applications were by 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 obtained an extension of time from the Commission can remain transitionally recognised after that date.

In 2017–18, the organisations panel finalised 18 applications, as shown in Table 30, compared with 35 applications in 2016–17. The spike in 2016–17 arose from applications for extension of recognition of TRAs.



Significant decision—union amalgamation to form the Construction, Forestry, Maritime, Mining and Energy Union

On 6 March 2018, the Commission granted an application for the amalgamation of three unions—the Maritime Union of Australia, the Textile, Clothing and Footwear Union of Australia and the Construction, Forestry, Mining and Energy Union. This followed a ballot of members of the Maritime Union of Australia and the Textile, Clothing and Footwear Union of Australia approving the amalgamation.

On appeal, a Full Bench rejected an application for the amalgamation to be overturned because the requirements of the Registered Organisations Act had not been met. The effect of the Full Bench's decision is that an amalgamation can take place if there are certain unresolved civil penalty proceedings against any of the organisations seeking to amalgamate.

Registered organisations (cont.)

You can read the decision approving the amalgamation at [2018] FWC 1017 and the Full Bench appeal decision at [2018] FWCFB 3710.

Since the end of the reporting period, an application for judicial review of the Full Bench's decision has been lodged in the Federal Court of Australia.

Table 30: Registered organisations—organisations panel—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
ROA s.137A—Orders about representation rights of organisations of employees	1	1	0	3	2	0	2	1
ROA s.151(1)—Membership agreement with state-registered union	0	0	0	1	0	0	0	1
ROA s.152(2)—Assets and liabilities agreement with state-registered union	2	0	1	0	2	0	1	0
ROA s.158(1)(a)—Change of name	0	1	1	0	0	1	1	1
ROA s.158(1)(b)—Changes to eligibility rules	3	11	6	10	3	12	6	11
ROA s.18(a)—Registration of association of employers	1	3	1	3	1	3	2	4
ROA s.18(b)—Registration of association of employees	0	0	1	2	0	0	0	3
ROA s.30—Cancellation of registration	2	2	1	6	2	2	3	5
ROA s.44(1)—Submission of amalgamation to ballot	0	1	0	0	1	0	0	0
ROA Sch.1, Cl.6(2)—Extension of transitional recognition	0	17	0	0	0	17	0	0
ROA Sch.1, Cl.6(3)—Extension of transitional recognition	7	0	0	0	7	0	0	0
Total	16	36	11	25	18	35	15	26

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 2017–18, the General Manager and her delegate finalised 93 applications for alterations to rules of registered organisations, consistent with previous years, as set out in Table 31.

Table 31: Registered organisations—General Manager—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
ROA s.159—Notification of alteration of rules	83	97	99	101	88	91	105	103
ROA s.158A—Alteration of eligibility rules	1	14	6	0	5	5	4	5
Total	84	111	105	101	93	96	109	108

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 2017–18, 96 per cent of applications were assessed with within 40 working days, consistent with the previous two reporting periods, as shown in Table 32.

Table 32: Registered organisations—General Manager—timeliness, alteration to rules

Matter type	Target	Percentage assessed within 40 days			
		2017–18	2016–17	2015–16	2014–15
ROA s.159—Notification of alteration of rules	95	96	99	96	78

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.



Significant decision—what is the Registered Organisations Commissioner's role in an appeal?

On 15 December 2017, a Full Bench of the Commission handed down its first decision in an appeal against the Registered Organisations Commissioner. The Full Bench overturned a decision not to grant a union more time to submit information about an election for union officers.

As this was the first appeal, the Full Bench considered the role of the Registered Organisations Commissioner in an appeal. It observed that the Commissioner's role should generally be limited to assisting a Full Bench through submissions about the Commissioner's powers and procedures in an appeal and the factual background to the matter. In this case, however, the Commissioner had advanced submissions about how the union's rules should be interpreted, which might give rise to a perception of not being impartial.

Given the Commissioner's ongoing role as a regulator, the Full Bench noted that it is particularly important for the Commissioner to be impartial. The Full Bench also decided that, by making a gratuitous statement that the union was liable for a civil penalty for lodging information late, there had been a miscarriage of the Commissioner's discretion.

You can read the decision in *Australian Municipal, Administrative, Clerical and Services Union v Registered Organisations Commission* at [2017] FWCFB 6249.

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 right of entry permits lodged under the Fair Work Act and the WHS Act have been fairly consistent in recent years. In 2017–18, a total of 1,391 permit applications were lodged, a decrease of 11 per cent from the total of 1,560 in 2016–17, as shown in Table 33.

Table 33: Registered organisations—right of entry permits—applications lodged and finalised

Matter type	No. lodged				No. finalised			
	2017–18	2016–17	2015–16	2014–15	2017–18	2016–17	2015–16	2014–15
FWA s.512—Application for a right of entry permit	1,350	1,521	1,628	1,481	1,373	1,532	1,590	1,555
WHSa s.131—Application for a work health and safety entry permit	41	39	44	44	42	39	46	44
Total	1,391	1,560	1,672	1,525	1,415	1,571	1,636	1,599

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 1,350 permits in 2017–18, a decrease of 10 per cent from the total of 1,501 in 2016–17, as shown in Table 34.

Of the 1,373 applications for a Fair Work Act right of entry permit that were finalised in 2017–18, 43 were assessed as being non-routine and were referred to the organisations panel for determination. Of these non-routine permit applications, 37 permits were issued (of which five were issued with conditions) and two applications were refused. The remaining four 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 63 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 34: Registered organisations—right of entry permits—finalisation of matters**

Matter type	No. issued				No. refused				No. withdrawn			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
FWA s.512— Application for a right of entry permit	1,315	1,468	1,520	1,483	2	2	7	6	56	62	63	66
WHS s.131— Application for a work health and safety entry permit	35	33	30	42	0	0	0	0	7	8	16	9
Total	1,350	1,501	1,550	1,525	2	2	7	6	63	70	79	75

FWA = Fair Work Act, WHSA = WHS Act

Timeliness

In 2017-18, the Commission took a median of 16 days to issue a Fair Work Act right of entry permit and a median of 25 days to issue a permit under the WHS Act, as set out in Table 35. This was an increase in median processing times, compared with 13 days and 20 days respectively in 2016-17.

Table 35: Registered organisations—right of entry permits—timeliness, days to issue

Matter type	Median time to issue permit (days)			
	2017-18	2016-17	2015-16	2014-15
FWA s.512—Application for a right of entry permit	16	13	9	8
WHS s.131—Application for a work health and safety entry permit	25	20	14	25

FWA = Fair Work Act, WHSA = WHS Act

Note: Timeliness data presented in Table 50 on page 112 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.

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 2017-18, the Commission heard 95 applications for permission to appeal. Of these, 65 per cent were refused, as shown in Table 36.

Appeals of Commission decisions (cont.)**Table 36: Appeals—permission to appeal outcomes**

Outcome	No. of matters				Percentage of matters			
	2017-18	2016-17	2015-16	2014-15 ¹	2017-18	2016-17	2015-16	2014-15 ¹
Permission not granted	62	80	107	52	65	73	78	74
Permission granted	33	29	26	18	35	27	19	26
Total	95	109	137²	70	100	100	97²	100

1 The 2014-15 data is for six months only, from 1 January 2015 to 30 June 2015.

2 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.

Determination of appeals

In 2017-18, Full Benches of the Commission determined a total of 169 appeal matters (including permission to appeal matters), as shown in Table 37. This is a 13 per cent decrease from the total of 195 in 2016-17. The proportion of appeals upheld increased in 2017-18, to 36 per cent of finalised appeals from 32 per cent in 2016-17.

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 51 per cent of all appeals finalised in 2017-18. Of the 86 unfair dismissal appeals heard in 2017-18 (including permission to appeal matters), 30 per cent were upheld. This represented an increase compared to previous reporting periods, with only 15 per cent of unfair dismissal appeals upheld in 2016-17 and 21 per cent in 2015-16.

Appeals concerning the approval of enterprise agreements made up the second largest number of matters, increasing to 18 per cent of decisions in 2017-18 from 11 per cent in 2016-17. This was a change from results in previous years, in which appeals concerning applications to deal with a dispute (under s.739) were consistently more common. Appeals of that type decreased to 14 per cent of decisions in 2017-18, from 15 per cent in 2016-17.

In 2017-18, of the decisions issued concerning agreement approvals, 65 per cent of appeals were upheld, compared with 73 per cent in 2016-17. Of the decisions concerning disputes, 29 per cent of appeals were upheld in 2017-18, compared with 47 per cent in 2016-17.

Table 37: Appeals—appeal outcomes

Matter type	No. upheld				No. dismissed				Total appeal decisions			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
Unfair dismissals	26	15	29	32	60	87	110	102	86	102	139	134
General protections	3	1	2	0	9	12	10	0	12	13	12	0
Agreement approvals	20	16	18	8	11	6	21	11	31	22	39	19
FWA s.739 disputes	7	14	14	11	17	16	29	22	24	30	43	33
Industrial action	2	3	6	1	0	1	2	5	2	4	8	6
Modern awards	0	0	0	1	0	0	0	0	0	0	0	1
Bargaining disputes	0	4	3	3	0	2	8	5	0	6	11	8
Right of entry	1	1	3	4	2	3	5	5	3	4	8	9
Anti-bullying	0	1	0	0	4	1	4	0	4	2	4	0
Miscellaneous	2	7	3	6	5	5	1	18	7	12	4	24
Total	61	62	78	66	108	133	190	168	169	195	268	234

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 23 to 24.

Appeals of Commission decisions (cont.)**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 2017–18, the Federal Court of Australia and High Court of Australia determined 13 matters on review from the Commission, a slight increase from 10 matters in 2016–17, as shown in Table 38.

Table 38: Appeals—judicial review decisions

Outcome	2017–18	2016–17	2015–16	2014–15
Upheld	4	2	4	5
Dismissed	9	8	11	10
Total	13	10	15	15

- Introductory statement
- Entity purpose
- Performance framework



3

Annual performance statements

Introductory statement

I, Bernadette O'Neill, as the accountable authority of the Fair Work Commission, present the 2017–18 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

18 September 2018

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, the corporate plan and annual performance statements.

The goals and performance measures set out in the framework in 2017-18 are shown in Table 39.

Table 39: 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: 2017-18 Corporate Plan, p.4)</p>
Portfolio Budget Statements	<p>2017-18 Budget Outcomes and Programs</p> <p><i>Outcome 1:</i> 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: 2017-18 PBS, p.120)</p> <p><i>Program 1.1:</i> 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: 2017-18 PBS, p.120)</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: 2017-18 Corporate Plan, p.6) • The Commission is accessible to all Australians, recognising the community's diverse needs and expectations (Source: 2017-18 Corporate Plan, p.7) • The Commission is efficient, accountable and transparent (Source: 2017-18 Corporate Plan, p.7) • 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: 2017-18 Corporate Plan, p.8)

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 2017–18* (Corporate Plan) and the *2017–18 Portfolio Budget Statements, Budget Related Paper No. 1.6, Employment 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.6	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.6	80%	86%

Results against performance criterion

Survey responses exceeded the target, with 86 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.6	Report on activities	Complete

Results against performance criterion

The Commission finalised two reports on activities that involved user consultation:

- Working Better for Small Business—available at www.fwc.gov.au
- Unfair Dismissal User Experience Research—available at www.fwc.gov.au.

Intended Result	The Commission is accessible to all Australians, recognising the community's diverse needs and expectations
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Performance Criterion	Target	Result
At least 80% of survey respondents in individual matters following a staff conference or conciliation found information, including on the Commission's website, was easy to understand. Source: Corporate Plan, p.7	80%	86%

Results against performance criterion

Survey responses exceeded the target, with 86 per cent of respondents finding that information, including on the Commission's website, was easy to understand.

Performance Criterion	Target	Result
At least 80% 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.7	80%	88%

Results against performance criterion

Survey responses exceeded the target, with 88 per cent of respondents satisfied with the relevance of information provided by the Commission.

Performance Criterion	Target	Result
At least 75% 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.7	75%	75%

Results against performance criterion

Survey responses met the target, with 75 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. Target: Corporate Plan, p.7	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**

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.120, Corporate Plan, p.7	34 days	27 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 27 days from lodgment. In 2017–18, 13,595 unfair dismissal applications were lodged and Commission staff conducted 10,491 conciliation conferences. This improves on our performance in 2016–17, when unfair dismissal conciliation conferences were conducted in a median of 34 days from lodgment.

Further information about the Commission's performance in dealing with unfair dismissal cases is on pages 27 to 34 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.120, Corporate Plan, p.7	Publication by 30 June 2018	Completed on 1 June 2018

Results against performance criterion

The Commission completed the annual wage review on 1 June 2018.

Further information on the annual wage review is on pages 53 to 55 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 with a target of 32 days. Source: PBS, p.120, Corporate Plan, p.7	32 days	76 days

Performance Criterion	Target	Result
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Results against performance criterion

The Commission did not meet the target of improving or maintaining the agreement approval time within a median of 32 days. In 2017-18, the agreement approval time was a median of 76 days, compared with a median of 32 days in 2016-17.

Further information about the Commission’s timeliness in approving enterprise agreements is on pages 64 to 69 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
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Performance Criterion	Target	Result
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90 per cent of performance and development plans specify individual and/or organisational development goals.
Source: Corporate Plan, p.8

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 2017-18, 100 per cent of performance and development plans specified individual and/or organisational development goals.

Performance Criterion	Target	Result
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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.8

Results against performance criterion

In 2017-18, 47 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.)

Overarching analysis of performance against the Commission's purposes

Activity One

In 2017–18, the Commission performed strongly against all but one of its performance criteria in achieving its purpose as set out in the Corporate Plan. Building on performance in our first annual performance statement, published in 2016–17, survey response rates were higher than in 2016–17 in most areas, with respondents again satisfied that their conciliations were even handed and that information was relevant and easy to understand, including information about our processes.

The Commission's performance in conducting conciliations in unfair dismissal cases improved from the previous reporting period, with conferences conducted in a median of 27 days, well ahead of the 34-day target. This reflects increased resourcing of both conciliators and administrative support, consistent with the high proportion of unfair dismissal applications each year.

Once again, the Commission delivered the decision in the annual wage review with ample time to enable an operative date of 1 July 2018.

The Commission has published two externally sourced research reports that examine how employees and small business employers experience our services. Further information about these reports can be found at page 25.

The median time taken to approve enterprise agreements was the only performance criterion for which the Commission did not meet its target. Detailed information is set out at pages 60 to 72.

Activity Two

To help enhance organisational capability, the Commission has an agile operating model which 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 2017–18, nearly half 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 eCase, the Commission's new case management system which will go live early in the 2018–19 financial year. Many others had the opportunity to take part in cross organisational initiatives such as the diversity working group, information management and governance project and recruitment working group. Opportunities such as these encourage innovation, collaboration and service excellence.



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



4 Management and accountability

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 three branch Executive Directors and meets fortnightly. More information about the branches and Executive Directors is in the Overview. The Executive is supported by five specialist bodies, as set out in Table 40.

Table 40: Governance bodies, 2017–18

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>

Table 40: Governance bodies, 2017-18 (cont.)

Body	Function
Information Management and Governance Committee	<p>The Information Management and Governance Committee (IMGC) is responsible for all information matters, including information risks, compliance and opportunities. The IMGC also deals with whole-of-government initiatives such as Digital Continuity 2020.</p> <p>The IMGC is appointed by the General Manager and reports to the General Manager and Executive.</p> <p>It is made up of senior staff whose roles involve key information responsibilities or obligations.</p> <p>During 2017-18, the IMGC met six times.</p>
Procurement Committee	<p>The Procurement Committee is responsible for ensuring that approaches to market at or above \$80,000 (including GST) are consistent with the Commonwealth Procurement Rules and Commission policies. The committee is managed by the Manager, Finance, and includes three other senior Commission employees.</p> <p>During 2017-18, the Procurement Committee met six times.</p>
Security Working Group	<p>The Security Working Group supports the Commission in meeting the requirements of the Australian Government Protective Security Policy Framework. It is a forum for review and development of relevant policies, plans and arrangements, principally concerning personnel, information and physical security. The working group consists of the Commission's security executive (the Executive Director, Corporate Services), security adviser, information technology security adviser and managers and staff who are routinely responsible for local security arrangements in offices across the organisation.</p>

Fraud management

The Commission has a fraud control plan and conducts fraud risk assessments regularly, including 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 2017-18 financial year.

Corporate governance (cont.)**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

18 September 2018

Risk management

In 2017–18, 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 2017–18, the Commission's internal auditors were RSM. The following internal audits were undertaken during the year:

- risk management framework review
- information management and governance review—part 1
- project management review—eCase project
- PGPA Act compliance review.

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

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 2017-18. 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 2017-18 financial statements. There were no other reports issued by the Auditor-General relating to the Commission in 2017-18.

There were no judicial decisions, decisions of administrative tribunals or decisions of the Australian Information Commissioner in 2017-18 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 2017-18 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. You can find information about complaints about Members at www.fwc.gov.au.

Service charter (cont.)

During 2017–18, the Commission received 99 written complaints about processes and practices. This is a decrease of 6 per cent, from 105 complaints in 2016–17, as set out in Table 41.

In 2017–18, there was a 37 per cent decrease in the number of complaints about staff conciliations, from 35 in 2016–17 to 22 in 2017–18. The number of complaints about the Commission’s processes decreased by 14 per cent from 2016–17, although they still represented 32 per cent of overall complaints.

The Commission aims to respond to written complaints within 20 working days. We responded to written complaints within an average of 11 days in 2017–18, a substantial improvement from 16 days in 2016–17.

Table 41: Complaints

Subject	2017–18	2016–17	2015–16	2014–15
Member conduct	6	4	8	10
Staff conciliation ¹	22	35	30	18
Outcome of a matter ²	5	7	6	23
Timeliness	0	1	4	1
Administration ³	15	17	20	26
Pay and entitlements	0	0	0	2
Complaint relating to modern awards or enterprise agreements ⁴	5	1	12	10
Adjournment request refusal	3	0	4	3
Process ⁵	32	37	45	59
Other ⁶	11	3	15	10
Total	99	105	144	162

- 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.
- 6 ‘Other’ incorporates all other complaints.

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 2018 census show that the Fair Work Commission is ranked 21st out of 95 APS entities for employee engagement, 22nd for innovation and 51st for wellbeing.

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 2017–18, mandatory training focused on the APS Values and Code of Conduct, fraud awareness and public interest disclosure.

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

In the May 2018 Australian Public Service Employee Census, 97 per cent of respondents felt they have the appropriate skills, capabilities and knowledge to do their job.

Recruitment and separations

During 2017–18, 77 new employees (ongoing or non-ongoing) commenced employment and 65 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 2018, 297 employees were covered by the agreement. Five of those employees were also covered by individual flexibility arrangements.

During 2017–18, 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 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)

Management of human resources (cont.)

- part-time work—at 30 June 2018, 24 ongoing employees and two non-ongoing employees (four male and 22 female) worked part time
- home-based work—at 30 June 2018, 13 ongoing employees had a home-based work agreement to combine ongoing work commitments with caring responsibilities and/or personal circumstances
- purchased leave—in 2017–18, 14 employees purchased additional leave
- job sharing—during 2017–18, four employees participated in job sharing arrangements.

In the May 2018 Australian Public Service Employee Census, 82 per cent of respondents were satisfied with the work–life balance of their current job and 86 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 a 12-month period
- 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 2018, the Commission employed a headcount of 297 staff (235 ongoing and 62 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 2017. The Commission did not have any casual employees at 30 June 2018. No Commission employees identified as Aboriginal or Torres Strait Islander at 30 June 2018.

Tables 42 to 45 provide detailed staffing statistics for the past two reporting periods.

Table 42: Ongoing employees by employment status (headcount)

	30 June 2018			30 June 2017		
	Female	Male	Total	Female	Male	Total
Full-time	122	76	198	107	64	171
Part-time	34	3	37	35	5	40
Total	156	79	235	142	69	211

Table 43: Non-ongoing employees by employment status (headcount)

	30 June 2018			30 June 2017		
	Female	Male	Total	Female	Male	Total
Full-time	39	20	59	49	24	73
Part-time	1	2	3	1	0	1
Total	40	22	62	50	24	74

Table 44: Employees by location (headcount)

	30 June 2018			30 June 2017		
	Female	Male	Total	Female	Male	Total
Victoria	125	72	197	121	63	184
New South Wales	31	15	46	29	16	45
Queensland	12	7	19	13	7	20
Western Australia	10	2	12	11	1	12
South Australia	7	3	10	8	4	12
Australian Capital Territory	6	2	8	5	2	7
Tasmania	3	0	3	3	0	3
Northern Territory	2	0	2	2	0	2
Total	196	101	297	192	93	285

Table 45: Employees by substantive classification (headcount)

	30 June 2018			30 June 2017		
	Female	Male	Total	Female	Male	Total
APS Level 2	2	2	4	2	2	4
APS Level 3	2	3	5	6	0	6
APS Level 4	36	22	58	39	26	65
APS Level 5	57	22	79	48	19	67
APS Level 6	59	24	83	62	22	84
Executive Level 1 ¹	20	11	31	15	5	20
Executive Level 2 ¹	17	16	33	17	18	35
SES Band 1	2	1	3	2	1	3
General Manager	1	0	1	1	0	1
Total	196	101	297	192	93	285

APS = Australian Public Service, SES = Senior Executive Service

1 The Commission employs conciliators at Executive Levels 1 and 2 who have specialist skills and do not have managerial roles. The Commission employed a headcount of 36 conciliators at 30 June 2018 and 36 conciliators at 30 June 2017.

Management of human resources (cont.)**Salary ranges**

Table 46 shows salary ranges for APS employees. Except for SES Band 1 employees, the specified ranges are taken from the agreement.

Table 46: Salary ranges by classification—APS employees

	2017–18	
	Minimum (\$)	Maximum (\$)
APS Level 2	53,853	58,977
APS Level 3	60,601	65,349
APS Level 4	67,473	73,222
APS Level 5	75,220	79,719
APS Level 6	81,467	93,712
Executive Level 1	103,709	112,233
Executive Level 2	119,577	139,945
SES Band 1 ¹	–	209,705

APS = Australian Public Service, SES = Senior Executive Service

¹ The General Manager determines the salaries of SES employees.

Note: The figures reflect base salary only and exclude superannuation and other benefits. The salary ranges shown for 2017–18 applied from commencement of the agreement on 4 October 2017. From 1 July 2017 until commencement of the agreement, the salary ranges specified in the Fair Work Australia Enterprise Agreement 2011–14 applied.

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

By 31 July each year, the Commission publishes on its website average annual remuneration paid to senior executives and other highly paid officials.

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. Information about the Procurement Committee is on page 103.

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 2017-18, two new consultancy contracts were entered into involving total actual expenditure of \$58,960 (including GST). In addition, two ongoing consultancy contracts were active during the period, involving total actual expenditure of \$48,261 (including GST).

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 2017-18 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*.

Financial management (cont.)

Procurement initiatives to support small business

The Commission supports small business participation in the Commonwealth Government procurement market. Small and medium enterprise (SME) 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.

Procurement targets are allocated to portfolios, with targets assigned to individual portfolio agencies. During 2017–18, the Commission spent \$1,511 million (including GST) with registered Supply Nation businesses.

Annual financial statements

The Commission is a non-corporate Commonwealth entity under the PGPA Act. The Commission's audited financial statements for 2017–18 are at Appendix E.

The Commission's operating revenue from government for the 2017–18 financial year was \$74.133 million. The Commission received own-source revenue of \$2.243 million, primarily represented by subleasing rental income.

Operating expenses decreased in 2017–18 to \$82.521 million (\$84.807 million in 2016–17). The major expenses in 2017–18 were \$46.802 million in respect of employee expenses, \$29.471 million relating to supplier payments and \$6.230 million in asset depreciation, amortisation and related expenses.

In 2017–18, the Commission ran a funded surplus of \$85,000 excluding depreciation and amortisation.

Performance against budget and comparison to the 2016–17 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 outcome can be found in tables F1 and F2 in Appendix F.

Mandatory information

Advertising and market research

During 2017–18, the Commission did not conduct any advertising campaigns.

Grants

Information on grants awarded by the Commission during 2017–18 is available at www.fwc.gov.au.

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 *Freedom of Information Act 1982* (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 7, page 59, 2016–17 Annual Report

The title of Table 7 published on page 59 of the 2016–17 Annual Report was incorrect. The table title should have stated that the data related to timeliness of approval of single-enterprise agreements.

The figures published in Table 7 on page 59 of the 2016–17 Annual Report for percentages of single-enterprise agreements approved within eight weeks and 12 weeks were incorrect. The correct data is presented in Table 23 of this annual report.

Table 16, page 78, 2016–17 Annual Report

The number of matters resolved at conciliation in unfair dismissal matters for 2014–15 was incorrect in Table 16 of the 2016–17 Annual Report. The correct figure is presented in Table D1 of this annual report.

Mandatory information (cont.)**Table 43, page 104, 2016–17 Annual Report**

The figures published in Table 43 in the 2016–17 Annual Report for the numbers of judicial review decisions that were upheld and dismissed and the total figures for 2016–17 and 2015–16 were incorrect. The correct data is presented in Table 38 of this annual report.

Permission to appeal outcomes, page 103, 2016–17 Annual Report

The statement on page 103 of the 2016–17 Annual Report that 81 per cent of applications for permission to appeal were refused was incorrect. The correct figure of 73 per cent was shown in Table 41 on page 103 of the 2016–17 Annual Report.

Table 47, page 109, 2016–17 Annual Report

The number of matters finalised under s.137A of the Registered Organisations Act for 2015–16 was incorrect in Table 47 of the 2016–17 Annual Report. The correct figure is 2 and the correct total for all finalisations for 2015–16 is 15.

The number of matters finalised under s.18(b) of the Registered Organisations Act for 2016–17 was incorrect in the 2016–17 Annual Report. The correct figure is 0 and the correct total for all finalisations in 2016–17 is 35.

The correct data is presented in Table 30 of this annual report.

Work health and safety outcomes, page 127, 2016–17 Annual Report

The Commission's workers compensation premium in the 2016–17 Annual Report was incorrect. The correct workers compensation premium for 2017–18 is 0.29 per cent.

Table D6, page 150, 2016–17 Annual Report

The numbers of hearings shown for Newcastle and for Other places in 2016–17 were incorrect in Table D6 of the 2016–17 Annual Report. The correct data is presented in Table D15 of this annual report.

Table 11, page 40, 2015–16 Annual Report

The figures for the numbers and corresponding percentages of settlements involving monetary payment for all ranges other than \$0–\$999 and \$1,000–\$1,999 were incorrect in Table 11 of the 2015–16 Annual Report. The correct numbers and percentages were presented in Table 19 of the 2016–17 Annual Report and are presented in Table D2 of this annual report.

Table 20, page 52, 2015–16 Annual Report

The percentage of settlements involving monetary payment for the \$4,000–\$5,999 range in Table 20 of the 2015–16 Annual Report was incorrect. The correct percentage is presented in Table D10 of this annual report.



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

5

Appendices



Appendix A: Members

Table A1: Fair Work Commission Members at 30 June 2018

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 PSM (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 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)

Commissioners

Commissioner AL Cribb (M)

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 Saunders (S/N)

Commissioner T Cirkovic (M)

Commissioner C Platt (A)

Commissioner K Harper-
Greenwell (M)

Commissioner J Hunt (B)

Commissioner SM McKinnon (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 2018

Fair Work Commission title	State title/Expert panel
Deputy President PD Hannon (A)	President, SAET
Deputy President DJ Barclay (H)	President, TIC
Mr A Cole	Expert panel member
Professor S Richardson	Expert panel member
Mr T Harcourt	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: Panels

Panel heads



Justice Ross AO
Expert panel for annual wage reviews



Deputy President Gostencnik
Manufacturing and building industry panel



Vice President Catanzariti AM
Major resources/infrastructure projects panel



Deputy President Clancy
Termination of employment panel

Government and recreational services panel



Senior Deputy President Hamberger PSM
Transport, agriculture, mining and services industry panel



Commissioner Hampton
Anti-bullying panel

Organisations panel

The President allocates all panel assignments.

For each of the Commission's eight panels, tables B1 to B8 set out panel heads, Members allocated to the panel and a description of the panel's role or the industries assigned to the panel.

All panel matters in Western Australia are allocated by Deputy President Binet. All panel matters in South Australia are allocated by Deputy President Anderson.

Commissioner Saunders, who is located in Newcastle, is available to all panels for matters in the Newcastle and Hunter regions.

Table B1: Major resources/infrastructure projects panel at 30 June 2018

Panel head

Vice President Catanzariti AM

Members

Deputy President Sams AM	Commissioner Hampton
Deputy President Binet	Commissioner Bissett
Deputy President Beaumont	Commissioner Simpson
Commissioner Spencer	
Commissioner Williams	

Description

Through the major resources/infrastructure projects panel, the Commission engages with industrial parties involved in major projects.

A major project is a project with a capital value of at least \$1 billion. However, projects of a particular regional significance may be allocated to the panel even though they have a capital value of less than \$1 billion.

To date, five projects have been allocated to the following Members:

Chevron Gorgon Gas Project	Deputy President Beaumont
INPEX Timor Sea Oil and Gas Project	Deputy President Binet and Commissioner Simpson
Wheatstone Gas Project	Commissioner Williams
BHP Billiton Mitsubishi Alliance (BMA) projects	Commissioner Spencer
Barangaroo South Development Project	Deputy President Sams AM

Appendix B: Panels (cont.)**Table B2: Government and recreational services panel at 30 June 2018****Panel head**

Vice President Catanzariti AM

Members

Vice President Hatcher¹
 Deputy President Hamilton
 Deputy President Kovacic
 Commissioner Cribb
 Commissioner Bissett
 Commissioner Simpson
 Commissioner Booth
 Commissioner Johns OAM
 Commissioner Wilson
 Commissioner Harper-Greenwell

Industries

Aged care industry
 Ambulance and patient transport
 Amusement, events and recreation industry
 Australian Capital Territory
 Broadcasting and recorded
 entertainment industry
 Children's services
 Christmas Island
 Cocos (Keeling) Islands
 Commonwealth employment
 Corrections and detentions
 Educational services
 Federal police operations
 Firefighting services
 Health and welfare services
 Indigenous organisations and services
 Local government administration
 Norfolk Island
 Northern Territory
 Racing industry
 Social, community, home care and
 disability services
 State and territory
 government administration
 Telecommunications services

¹ Vice President Hatcher is allocated to this panel to hear more complex matters.

Table B3: Manufacturing and building industry panel at 30 June 2018

Panel head

Deputy President Gostencnik

Members

Vice President Hatcher¹
Deputy President Dean
Deputy President Masson
Commissioner McKenna
Commissioner Riordan
Commissioner Cirkovic
Commissioner Hunt
Commissioner McKinnon

Industries

Building, metal and civil construction industries
Cement and concrete products
Clothing industry
Electrical contracting industry
Food, beverages and tobacco manufacturing industry
Manufacturing and associated industries
Pharmaceutical industry
Plumbing industry
Rubber, plastic and cable making industry
Textile industry
Timber and paper products industry
Vehicle industry

1 Vice President Hatcher is allocated to this panel to deal with the steel industry and more complex matters.



Appendix B: Panels (cont.)**Table B4: Transport, agriculture, mining and services industry panel at 30 June 2018****Panel head**

Senior Deputy President Hamberger PSM

Members	Industries	
Vice President Hatcher ¹	Agriculture industry	Passenger vehicle transport (non-rail) industry
Deputy President Sams AM	Airline operations	Port authorities
Deputy President Booth	Airport operations	Postal services
Deputy President Asbury	All other industries ²	Poultry processing
Deputy President Bull	Aluminium industry	Quarrying industry
Deputy President Clancy	Banking, finance and insurance industry	Rail industry
Deputy President Colman	Cleaning services	Retail industry
Deputy President Millhouse	Clerical industry	Road transport industry
Commissioner Spencer	Coal export terminals	Security services
Commissioner Cambridge	Coal industry	Stevedoring industry
Commissioner Lee	Commercial sales	Storage services
Commissioner Gregory	Dredging industry	Sugar industry
	Electrical power industry	Tasmania
	Graphic arts	Waste management industry
	Hospitality industry	Water, sewerage and drainage services
	Licensed and registered clubs	Wine industry
	Maritime industry	
	Meat industry	
	Mining industry	
	Miscellaneous	
	Oil and gas industry	

1 Vice President Hatcher is allocated to this panel to hear more complex matters.

2 Animal care and veterinary services; Aquaculture; Asphalt industry; Building services; Business equipment; Cemetery operations; Contract call centre; Diving services; Dry cleaning and laundry services; Fast food; Funeral directing services; Gardening services; Grain handling; Hair and beauty; Journalism; Live performance; Mannequins and modelling; Marine tourism and charter vessels; Market and business consultancy services; Nursery; Pet food manufacturing; Pharmacy operations; Publishing; Real estate; Restaurants; Salt industry; Scientific services; Seafood processing; Sporting organisations; Technical services; Tourism; Uranium mining (including construction); and Wool storage, sampling and testing.

Table B5: Termination of employment panel at 30 June 2018

Panel head

Deputy President Clancy

Deputy panel head

Commissioner Bissett

Description

Most Members of the Commission deal with termination of employment applications under arrangements administered by the termination of employment panel head.

Table B6: Anti-bullying panel at 30 June 2018

Panel head

Commissioner Hampton

Description

This panel has responsibility for anti-bullying matters, which are dealt with by Members of the Commission under arrangements administered by the anti-bullying panel head.

Table B7: Organisations panel at 30 June 2018

Panel head

Senior Deputy President Hamberger PSM

Deputy panel head

Deputy President Gostencnik

Members

Vice President Hatcher

Deputy President Binet

Commissioner Saunders

Description

This panel has responsibility for matters relating to registered organisations.

Appendix B: Panels (cont.)**Table B8: Expert panel for annual wage review at 30 June 2018****Panel head**

Justice Ross AO

Members

Vice President Hatcher	Mr A Cole
Deputy President Asbury	Professor S Richardson
Commissioner Hampton	Mr S Gibbs

Description

The Fair Work Act provides for an annual wage review conducted by an expert panel each year.

The expert panel comprises the President, three other full-time Members (appointed by the President each year) and three part-time Members.



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 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.

Senior Deputy President Hamberger is a Vice President of the Committee of the Industrial Relations Society of New South Wales; and an Honorary Research Fellow, Faculty of Law, University of Sydney.

Deputy President Sams is Co-convenor of Advocacy in the Industrial Relations Tribunals course, run in conjunction with the University of Technology Sydney 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; the Asia Representative on the World Governing Committee of the International Labour and Employment Relations Association; a Committee Member of the Royal Perth Hospital Human Research Ethics Committee; a member of the Australian Association of Women Judges; and a member of the Australian Human Resources Institute.

Deputy President Clancy is an honorary, non-executive director of the Sisters of St Joseph Health Care Services (Victoria) board.

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

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

Deputy President Beaumont is Chair of the Pharmaceutical Benefits Remuneration Tribunal.

Commissioner Cribb is President of the Industrial Relations Society of Victoria.

Appendix C: Members' activities (cont.)

Commissioner Spencer is Chairperson of the Northern Territory Correctional Officers Arbitral Tribunal and Deputy Chairperson of the Northern Territory Police Arbitral Tribunal.

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.

Commissioner Johns is Chairman of the Australian Ballet School; Vice-President of the Victorian College of the Arts Secondary School Council and Treasurer of the Industrial Relations Society of New South Wales.

Commissioner Wilson is a member of the Tasmanian Industrial Commission.

Commissioner 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.

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

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 Labour and Employment Relations Association.

Presentations and speaking engagements

Justice Ross made presentations to the Council of Small Business Organisations Australia (COSBOA) National Small Business Summit in August 2017; and the Annual Union Lawyers and Industrial Officers Annual Labour Law Conference in March 2018. He hosted the international heads of agency and heads of Commonwealth of Australia tribunals meetings in October and November 2017 and spoke on the *Best Practice* show on ABC Radio National in June 2018.

Vice President Catanzariti spoke at the Bar Association of Queensland Employment and Industrial Relations Conference in August 2017; the Australian Industry Group 2018 National PIR (Policy-Influence-Reform) Conference in April 2018; and the Australian Higher Education Industrial Association Higher Education HR/IR Conference in May 2018.

Senior Deputy President Hamberger presented three one-day workshops to the Industrial Relations Society of New South Wales in July and August 2017 relating

to workplace dispute prevention and resolution, enterprise bargaining, and the prevention and resolution of anti-bullying applications. He spoke to ClubsNSW on the 4 yearly review of modern awards in August 2017.

Deputy President Sams presented Updates from the Fair Work Commission at the Akolade Workplace Law Fundamentals Roadshow in March 2018 and participated in the Advocacy in the Industrial Relations Tribunals course, run in conjunction with the University of Technology Sydney Business School and the Industrial Relations Society of New South Wales in June–July 2018.

Deputy President Booth presented at the Commission's International Perspectives on Dispute Resolution Conference in November 2017; the Newcastle Industrial Relations Society's launch of the publication *Cooperation at work: how tribunals can help transform workplaces* in February 2018; workshops held by the New South Wales and Queensland aged care sectors in March 2018; the Hunter Employee Relations Network in May 2018; the Industrial Relations Society of New South Wales Annual Conference in May 2018; and the Queensland Nurses and Midwives Union Annual Conference in June 2018.

Deputy President Asbury gave presentations at the Australian Meat Industry Council National Meat Industry WH&S Conference in July 2017; at a Legalwise seminar in November 2017; and to attendees at the IRIQ Law luncheon in June 2018. The Deputy President also facilitated moots with members of the Industrial Relations Society of Queensland in June 2018.

Deputy President Bull gave presentations to the Real Estate Employers Federation of Western Australia in September 2017; to Clubs WA in October 2017; and to UnionsWA in November 2017.

Deputy President Binet delivered a New Approaches workshop for the Industrial Relations Society of Western Australia in July 2017 and facilitated mock hearings for the society's advocacy course in August 2017. The Deputy President also presented Updates from the Fair Work Commission at the Konnect Learning Employment Law Conference 2018 in February 2018 and the Akolade Workplace Law Fundamentals Roadshow in March 2018. In March 2018, she spoke at the Aged and Community Services Australia National People and Culture and Chief Executive Officer forum.

Deputy President Clancy addressed the COSBOA National Small Business Summit in August 2017, and gave a presentation at the Legalwise Workplace Law Series: Modern Issues and Industrial Relations in September 2017.

Deputy President Anderson spoke at an industrial law seminar conducted by the Law Society of South Australia; to students enrolled in the Management of Industrial Relations course at the University of South Australia in May 2018; and at a delegate training program conducted by the Shop, Distributive and Allied Employees Association (SA Branch) in June 2018.

Commissioner Cribb spoke at the Australian Government Solicitor Employment Law Forum 2017 in Canberra in October 2017.

Appendix C: Members' activities (cont.)

Commissioner Spencer presented Updates from the Fair Work Commission at the Konnect Learning Employment Law Conference 2018 in February 2018 and at the Akolade Workplace Law Fundamentals Roadshow in March 2018.

Commissioner Hampton participated in a Safe Work Australia panel session for National Safe Work month. In August he gave a presentation to an Australian Labour and Employment Relations Association of ACT meeting. He gave two presentations to the Queensland Industrial Relations Society Annual Conference in October 2017. In November 2017, he presided over mock hearings as part of an ACTU delegates training program in Adelaide, and in April 2018 he was the keynote speaker at the No More Harm National Conference in Melbourne.

Commissioner Gregory gave a speech to the Bayside Group in July 2017; conducted a mock unfair dismissal hearing for Deakin University MBA Program's IR component in October 2017; and presented Updates from the Fair Work Commission at the Konnect Learning Employment Law Conference in February 2018.

Commissioner Booth participated in a panel discussion on the role of legal representation and the changing nature of work for law students at the University of Queensland on 31 May 2018.

Commissioner Lee gave presentations to students in the RMIT Juris Doctor Program; at the Australian Government Legal Network Government Lawyers Conference in August 2017; and at Melbourne University in September 2017.

Commissioner Wilson gave presentations at the WEstjustice train the trainer program in October 2017 and May 2018; and the Akolade Workplace Law Fundamentals Roadshow on Updates from the Fair Work Commission, in March 2018.

Commissioner Cirkovic gave presentations at the inaugural Practical Justice AAWI Conference on workplace investigations in October 2017; and to Swinburne University students visiting the Commission in May 2018.

Commissioner Platt gave presentations to human resource management students at the University of South Australia in May 2018, and to SDA delegates in June 2018.

International engagement and professional development activities

In November 2017, Justice Ross met with representatives of international workplace relations and dispute resolution agencies for meetings and discussions on a range of topics.

Vice President Hatcher met a delegation from the Korean Minimum Wage Commission in November 2017, led by its Vice President, Mr Sung Ho Kim. The group were researching Australian minimum wage policy.

In December 2017, Deputy President Hamilton met with a 12-person delegation from the Vietnam General Confederation of Labour, which attended the Commission as

part of a visit coordinated by the International Labour Organization through Union Aid Abroad.

Deputy President Sams met with a six-person delegation from the National Labor Relations Commission of Korea, led by its Director, Mr Don Uk Kim, on the Commission's unfair dismissal jurisdiction in December 2017. In May 2018, a 23-person delegation from the Korean Employment and Labor Training Institute met with the Deputy President for a briefing and then observed a hearing.

In October 2017, representatives from the New Zealand Ministry of Business, Innovation and Employment met with Deputy President Booth and visiting Professor Joel Cutcher-Gershenfeld to discuss the New Approaches program. The representatives also met with senior Commission staff to discuss telephone conciliations and the eCase project.

Deputy President Kovacic met with a 15-person delegation of labour inspectors from the Korean Ministry of Employment and Labor in December 2017 to talk about the work of the Commission; and with representatives from the French Embassy in May 2018 to discuss how Australia sets the minimum wage.

In October 2017, Deputy President Clancy met with Dr Chokchai Suttawet from Mahidol University, Thailand, to provide an overview of Australia's unfair dismissal jurisdiction.

In December 2017, Commissioner Hampton travelled to the United Kingdom to meet with representatives from the Advisory, Conciliation and Arbitration Service; the London School of Economics; the Department for Business, Energy & Industrial Strategy; Her Majesty's Courts and Tribunals Service; and the Low Pay Commission. He travelled to the Republic of Ireland to meet with and conduct workshops for the Workplace Relations Commission and Low Pay Commission.

As part of their visit to participate in heads of agencies meetings, representatives from the Canada Industrial Relations Board met with Commissioner Lee and senior Commission staff in October 2017 to talk about the process of establishing Fair Work Australia in 2009.

In October 2017, representatives from the National Wages Consultative Council of Malaysia, led by its Secretary Mr Shanmugam s/o Thiagarajan, met with representatives of the Commission to talk about Australia's workplace relations system.

In June 2018, a four-person delegation from the New Zealand Ministry of Business, Innovation and Employment attended the Commission and met with the General Manager and Executive Directors to discuss a range of matters, and to observe a conciliation.

In June 2018, representatives of the Commission met with an 11-person delegation from the Indonesia National Wage Council and the Consulate General of the Republic of Indonesia, Melbourne, to talk about how the wages system and policies in Australia could be a benchmark for improvement in Indonesia's wage system.



Appendix D: Tables and figures reference data

Table D1: Unfair dismissal—conciliation outcomes

Outcome	2017-18	2016-17	2015-16	2014-15
Matters settled	8,285	8,880	8,529	8,788
Settlement—monetary items without reinstatement	1,404	1,660	1,712	1,750
Settlement—monetary and non-monetary items without reinstatement	5,171	5,511	5,122	5,147
Settlement—non-monetary items without reinstatement	1,650	1,627	1,624	1,820
Settlement—reinstatement	35	42	35	47
Settlement—reinstatement and monetary items	12	23	17	15
Settlement—reinstatement and non-monetary items	8	13	11	4
Settlement—reinstatement, monetary and non-monetary items	5	4	8	5
Matters not settled	2,206	2,280	2,321	2,337
Total	10,491	11,160	10,850	11,125

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			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
0-999	510	553	539	526	8	8	8	8
1,000-1,999	935	1,002	922	1,038	14	14	13	15
2,000-3,999	1,683	1,893	1,866	1,806	26	26	27	26
4,000-5,999	1,206	1,344	1,288	1,338	18	19	19	19
6,000-7,999	760	790	717	739	12	11	10	11
8,000-9,999	418	474	447	438	6	7	7	6
10,000-14,999	606	643	608	565	9	9	9	8
15,000-19,999	219	251	236	227	3	3	3	3
20,000-29,999	168	163	153	163	3	2	2	2
30,000-39,999	48	49	57	48	1	1	1	1
40,000-maximum amount ¹	39	32	26	29	1	<1	<1	<1
Total	6,592	7,194	6,859	6,917	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 matters				Percentage of conciliations			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
Number of employees¹								
1-14	2,098	2,184	2,000	2,059	20	20	18	19
15-99	2,830	3,100	3,065	3,152	27	28	28	28
>100	5,008	5,307	5,204	5,272	48	48	48	47
Unknown ¹	1	7	4	4	<1	<1	<1	<1
In dispute	554	563	577	638	5	5	5	6
Total	10,491	11,161	10,850	11,125	100	100	100	100

1 Based on information from respondents, where provided.

Table D4: Unfair dismissal—employer objections

	2017-18	2016-17	2015-16	2014-15
Outcome				
Employer's objection upheld	195	401	769	890
Employee was not dismissed	35	39	52	46
Employer not national system employer	1	5	8	13
Frivolous, vexatious	0	1	0	0
Genuine redundancy	14	22	49	83
Irregular and/or casual employee	1	4	0	3
Minimum period of employment not served	37	126	99	109
Multiple applications	0	2	0	2
No award, agreement or high-income employee	10	15	18	34
No employment relationship	5	7	13	19
No extension of time—up to and including 7 days late	26	61	153	180
No extension of time—more than 7 days late	54	115	342	368
No reasonable prospect of success	6	3	6	5
Termination consistent with Small Business Fair Dismissal Code	10	7	16	12
Unknown	4	5	24	33

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

Outcome	2017-18	2016-17	2015-16	2014-15
Employer's objection dismissed	73	114	265	266
Employee was dismissed	4	11	13	25
Application within time	16	21	30	20
Award, agreement and/or not high-income employee	7	7	13	10
Employment relationship	3	2	5	8
Extension of time—up to and including 7 days	16	25	106	82
Extension of time—more than 7 days	7	17	50	72
Minimum period of employment served	15	16	33	28
National system employer	0	1	0	3
No genuine redundancy	3	11	8	15
No multiple applications	0	0	0	0
Not frivolous, vexatious	0	0	2	0
Not irregular casual employee	5	4	3	2
Reasonable prospect of success	1	2	1	5
Termination inconsistent with Small Business Fair Dismissal Code	2	1	5	5
Unknown	2	6	6	7
Total	268	515	1,034	1,156

Note: An application may be found in or out of jurisdiction on more than one ground. Accordingly, the results are not cumulative.

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

Outcome	2017-18	2016-17	2015-16	2014-15
Dismissed (s.587)	155	112	125	77
Dismissed by panel head (s.587)	70	120	112	107
Failure to attend	0	1	1	0
Incomplete application	9	32	21	12
Minimum employment period not met	28	34	40	52
No notice of discontinuance filed after settlement	1	2	8	0
No reasonable prospect of success	23	17	12	7
Non-compliance with directions	0	3	3	4
Premature application	0	0	0	0
Unpaid application	35	56	42	38
Verbal or written advice of discontinuance	0	0	0	0
Application to dismiss granted (s.399A)	96	88	125	104
Total	321	320	362	288

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	2017-18	2016-17	2015-16	2014-15
Application dismissed—dismissal was fair	104	125	130	161
Application granted—no remedy granted	7	6	7	10
Application granted—monetary	110	135	135	141
Application granted—reinstatement	6	10	12	12
Application granted—reinstatement and lost remuneration	17	15	18	15
Application granted—remedy to be determined	19	16	24	10
Total	263	307	326	349

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

Result (\$)	2017-18	2016-17	2015-16	2014-15
0-999	8	2	5	3
1,000-1,999	5	12	10	15
2,000-3,999	17	27	18	17
4,000-5,999	15	20	16	21
6,000-7,999	17	12	14	15
8,000-9,999	13	9	11	10
10,000-14,999	9	14	21	20
15,000-19,999	8	17	13	14
20,000-29,999	6	13	15	15
30,000-39,999	3	4	6	5
40,000-maximum amount ¹	3	3	4	2
No loss of wages	0	0	0	1
Unknown ²	6	2	2	3
Total	110	135	135	141

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	2017-18	2016-17
Amount	\$6,971	\$7,196
Equivalent number of weeks' pay	4.3	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 for 2016-17 and 2017-18.

Table D9: Unfair dismissal—arbitration outcomes, application granted with reinstatement and lost remuneration

Result (\$)	2017-18	2016-17	2015-16	2014-15
0-999	0	0	0	0
1,000-1,999	0	0	0	1
2,000-3,999	0	0	2	1
4,000-5,999	2	0	1	1
6,000-7,999	0	1	2	1
8,000-9,999	0	1	1	0
10,000-14,999	7	2	0	2
15,000-19,999	0	2	2	1
20,000-29,999	0	1	1	2
30,000-39,999	2	0	2	1
40,000-maximum amount ¹	5	1	2	0
No loss of wages	1	2	2	2
Unknown ²	0	5	3	3
Total	17	15	18	15

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			
	2017-18	2016-17	2015-16	2014-15	2017-18	2016-17	2015-16	2014-15
0-999	181	146	117	138	9	9	10	13
1,000-1,999	250	190	178	163	13	12	15	16
2,000-3,999	388	323	224	192	20	21	19	18
4,000-5,999	278	229	180	141	15	15	15	13
6,000-7,999	152	128	91	66	8	8	8	6
8,000-9,999	96	69	52	34	5	4	4	3
10,000-14,999	180	147	108	80	9	10	9	8
15,000-19,999	95	81	54	34	5	5	5	3
20,000-29,999	78	64	45	38	4	4	4	4
30,000-39,999	29	29	26	24	2	2	2	2
40,000-49,999	17	9	16	13	1	1	1	1
50,000-59,999	18	5	7	7	1	<1	<1	1
60,000-69,999	8	12	7	6	<1	1	<1	1
70,000-79,999	5	7	6	6	<1	<1	<1	1
80,000-89,999	2	8	4	2	<1	1	0	<1
90,000-99,999	2	1	6	2	<1	<1	<1	<1
> 100,000	13	9	13	6	1	1	1	1
Unknown	114	83	56	99	6	5	5	9
Total	1,906	1,540	1,190	1,051	100	100	100	100

Table D11: General protections disputes involving dismissal—lodgment of applications for consent arbitration

Matter type	2017-18	2016-17	2015-16	2014-15
FWA s.365—General protections disputes involving dismissal—consent arbitration	18	23	18	16

FWA = Fair Work Act

Table D12: Anti-bullying—applications finalised by decision

Outcome	2017-18	2016-17	2015-16	2014-15
Matter finalised by administrative dismissal	34	41	28	47
Matter finalised at jurisdiction	3	6	3	2
Substantive application granted	8	3	12	1
Substantive application dismissed	8	10	14	10
Total	53	60	57	60

Table D13: Annual wage review—timeliness

Target	2017-18	2016-17	2015-16	2014-15
30 June	1 June 2018	6 June 2017	31 May 2016	2 June 2015

Appendix D: Tables and figures reference data (cont.)**Table D14: Decisions and orders published**

	2017-18	2016-17	2015-16	2014-15
Decisions and orders published	9,717	11,103	12,140	12,440

Table D15: Hearings and conferences conducted by Members, by location or method

Location or method	2017-18	2016-17	2015-16	2014-15
Adelaide	240	225	261	312
Brisbane	647	866	894	1,145
Canberra	101	120	117	124
Darwin	35	18	47	38
Hobart	58	47	70	103
Melbourne	1,989	2,080	2,228	3,479
Newcastle	93	137	95	154
Perth	522	618	683	627
Sydney	1,277	1,516	1,817	2,650
Wollongong	0	0	115	216
Other places	294	337	254	244
In chambers	2,316	5,543	5,662	5,690
Telephone	2,839	3,372	3,208	3,809
Video	785	925	1,232	1,331
Total	11,196	15,804	16,683	19,922

Table D16: Applications lodged, by matter type

Matter type	2017-18
<i>Fair Work Act 2009</i>	30,682
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	136
s.156—4 yearly review of modern awards	18
s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective	1
s.158—Application to vary or revoke a modern award	4
s.160—Application to vary a modern award to remove ambiguity or uncertainty or correct error	4
s.182(4)—Application for approval of a greenfields agreement	1
s.185—Application for approval of a greenfields agreement	149
s.185—Application for approval of a multi-enterprise agreement	36
s.185—Application for approval of a single-enterprise agreement	5,102
s.210—Application for approval of a variation of an enterprise agreement	564
s.217—Application to vary an agreement to remove an ambiguity or uncertainty	38
s.217A—Application to deal with a dispute about variations	1
s.222—Application for approval of a termination of an enterprise agreement	130
s.225—Application for termination of an enterprise agreement after its nominal expiry date	388
s.229—Application for a bargaining order	61
s.236—Application for a majority support determination	91
s.238—Application for a scope order	14
s.240—Application to deal with a bargaining dispute	171
s.248—Application for a single interest employer authorisation	11
s.252—Application to extend single interest employer authorisation	1
s.260—Application for special low-paid workplace determination	1
s.266—Industrial action related workplace determination	1
s.285—Annual wage review	1
s.302—Application for an equal remuneration order	7

Appendix D: Tables and figures reference data (cont.)**Table D16: Applications lodged, by matter type (cont.)**

Matter type	2017-18
s.318—Application for an order relating to instruments covering new employer and transferring employees	62
s.318—Application for an order relating to instruments covering new employer and transferring employees in agreements	6
s.319—Application for an order relating to instruments covering new employer and non-transferring employees	28
s.320—Application to vary a transferable instrument—agreement	2
s.365—Application to deal with contraventions involving dismissal	4,117
s.365—Application to deal with contraventions involving dismissal (consent arbitration)	18
s.372—Application to deal with other contravention disputes	902
s.394—Application for unfair dismissal remedy	13,595
s.401—Application for costs orders against lawyers and paid agents	3
s.402—Application for costs orders against lawyers and paid agents under s.401	1
s.418—Application for an order that industrial action by employees or employers stop etc.	56
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	4
s.426—Application to suspend protected industrial action—significant harm to a third party	2
s.428—Application to extend a period of suspension	1
s.437—Application for a protected action ballot order	602
s.447—Application for variation of a protected action ballot order	27
s.448—Application for revocation of a protected action ballot order	54
s.459—Application to extend the 30-day period in which industrial action is authorised by protected action ballot	135
s.472—Application for an order relating to certain partial work bans	4
s.483AA—Application for an order to access non-member records	11
s.505—Application to deal with a right of entry dispute	42
s.512—Application for a right of entry permit	1,350

Matter type	2017-18
s.516—Application to extend entry permit	22
s.520—Application for an affected member certificate	1
s.526—Application to deal with a dispute involving stand down	9
s.531—Application for an order where failure to notify or consult registered employee associations about dismissals	5
s.533—Application for an FWC order	1
s.576(2)(aa)—Promoting cooperative and productive workplace relations and preventing disputes	27
s.576(2)(ca)—Proceeding referred to FWC for mediation	5
s.589—Application for procedural and interim decision	2
s.602—Application to correct obvious error(s) etc. in relation to FWC's decision	4
s.603—Application to vary or revoke a FWC decision	6
s.604—Appeal of decisions	190
s.611—Application for costs	2
s.739—Application to deal with a dispute	1,576
s.739—Application to deal with a dispute in relation to flexible working arrangements	41
s.768BA—Application for an order about coverage for transferring employees under a state instrument	4
s.768BB—Application for an order about coverage for employee organisations under a state instrument	11
s.773—Application to deal with an unlawful termination dispute	90
s.786—Application for an order re failure to notify or consult registered employee associations about terminations	1
s.789FC—Application for an order to stop bullying	721
Fair Work (Registered Organisations) Act 2009	163
Chapt. 11 Pt 4A—Protected Disclosure direct to FWC	1
Education activities—FWC	2
Request for advice and assistance—FWC	60
s.13(1)(b)—Advice and assistance to organisations	5
s.137A—Orders about representation rights of organisations of employees	1
s.152(2)—Assets and liabilities agreement with state-registered union	2

Appendix D: Tables and figures reference data (cont.)**Table D16: Applications lodged, by matter type (cont.)**

Matter type	2017-18
s.158(1)—Application for alteration of eligibility rules	3
s.158A—Application to GM for alteration of eligibility rules	1
s.159(1)—Notification of alterations of other rules	83
s.18(a)—Application for registration by an association of employers	1
s.180—Conscientious objection to membership of organisations	2
s.30(1)(a)—Application by organisation for cancellation of registration	2
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	566
Sch. 1, Cl. 6(3) RO Act—Application for an extension by a transitionally recognised association	7
Sch. 3, Item 10—Application to vary transitional instrument to remove ambiguity—agreement	2
Sch. 3, Item 15—Application by agreement to terminate collective agreement-based transitional instrument	11
Sch. 3, Item 16—Application to terminate collective agreement-based transitional instrument	158
Sch. 3, Item 17—Application by agreement to terminate individual agreement-based transitional instrument	286
Sch. 3, Item 19—Declaration for unilateral termination with FWC approval to terminate individual agreement	99
Sch. 3A, Item 23—Termination by the FWC of Collective Division 2B state employment agreement	3
<i>Work Health and Safety Act 2011</i>	41
s.131—Application for a work health and safety entry permit	41
<i>Workplace Relations Act 1996</i>	7
s.170LW—pre-reform Act—Application for settlement of dispute (certified agreement)	3
s.709—Application to FWC to have a dispute resolution process conducted (Div 5)	4
Administrative	95
Request for a Board of Reference	91
Rule 7 (FWC)—Directions on Procedure	4
Grand total	31,554

FWC = Fair Work Commission, GM = General Manager

Appendix E: Financial statements

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Audited Financial Statements 2017–18



FINANCIAL STATEMENTS 2017 - 18

FAIR WORK COMMISSION



INDEPENDENT AUDITOR'S REPORT

To the Minister for Jobs and Industrial Relations

Opinion

In my opinion, the financial statements of the Fair Work Commission for the year ended 30 June 2018:

- (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 Fair Work Commission as at 30 June 2018 and its financial performance and cash flows for the year then ended.

The financial statements of the Fair Work Commission, which I have audited, comprise the following statements as at 30 June 2018 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 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 Fair Work Commission 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 Fair Work Commission, the General Manager is responsible under the *Public Governance, Performance and Accountability Act 2013* for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under that Act. The General Manager is also responsible for such internal control as the General Manager determines is necessary to enable the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the General Manager is responsible for assessing the Fair Work Commission's ability 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.

Appendix E: Financial statements (cont.)**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 those charged with governance 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 2018

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Appendix E: Financial statements (cont.)**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 2018 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 2018

Signed



Jack Lambalk
Chief Financial Officer
4 September 2018

Statement of Comprehensive Income
for the period ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Employee benefits	1.1A	46,802	47,749	49,702
Suppliers	1.1B	29,471	32,095	26,889
Depreciation and amortisation	3.2A	6,230	4,947	2,829
Write down and impairment of assets		18	12	-
Other expenses		-	4	-
Total expenses		82,521	84,807	79,420
Own-Source Income				
Own-source revenue				
Sale of goods and rendering of services	1.2A	108	409	300
Rental income	1.2B	2,055	2,409	2,100
Other revenue	1.2C	80	83	58
Total own-source revenue		2,243	2,901	2,458
Total own-source income		2,243	2,901	2,458
Net (cost of)/contribution by services		(80,278)	(81,906)	(76,962)
Revenue from Government	1.2D	74,133	78,099	74,133
Surplus / (Deficit) on continuing operations		(6,145)	(3,807)	(2,829)
OTHER COMPREHENSIVE INCOME				
Items not subject to subsequent reclassification to net cost of services				
Changes in asset revaluation surplus	3.2A	-	12,148	-
Total comprehensive income		(6,145)	8,341	(2,829)

The above statement should be read in conjunction with the accompanying notes.

Appendix E: 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 was higher than budgeted due to an independent valuation, and adjustments to useful life estimates being completed after the budget was prepared.

Statement of Financial Position

as at 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents	3.1A	562	1	789
Trade and other receivables	3.1B	31,817	31,824	34,236
Total financial assets		32,379	31,825	35,025
Non-financial assets				
Leasehold improvements	3.2A	21,631	24,209	17,050
Plant and equipment	3.2A	4,078	4,628	2,660
Computer software	3.2A	4,012	1,529	4,874
Other non-financial assets	3.2B	14,681	4,612	4,538
Total non-financial assets		44,402	34,978	29,122
Total assets		76,781	66,803	64,147
LIABILITIES				
Payables				
Suppliers	3.3A	2,143	1,426	1,130
Other payables	3.3B	17,019	4,872	6,502
Total payables		19,162	6,298	7,632
Provisions				
Employee provisions	6.1A	13,530	12,653	17,727
Other provisions		89	89	89
Total provisions		13,619	12,742	17,816
Total liabilities		32,781	19,040	25,448
Net assets		44,000	47,763	38,699
EQUITY				
Contributed equity		45,920	43,538	48,533
Reserves		12,410	12,410	262
Retained surplus/(Accumulated deficit)		(14,330)	(8,185)	(10,096)
Total equity		44,000	47,763	38,699

The above statement should be read in conjunction with the accompanying notes.

Appendix E: 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.

Leasehold improvements

The Fair Work Commission conducted an independent valuation of non-financial assets in the 2016-17 financial year, resulting in assets being revalued and the useful life estimate of major leasehold improvement assets being extended. The revaluation was not completed until after the 2017-18 budget was published.

Other Non-financial Assets

Other non-financial assets were higher than expected due to the Fair Work Commission entering into two major long-term lease commitments which included lease incentives receivable. Incentives receivable are reduced as per the terms of the lease.

Computer software

During 2017-18 the Commission has been developing a new Case Management System. At 30 June 2018 the development of the system was ongoing.

Suppliers

The variance in suppliers is due to timing of invoices received at the end of the financial year.

Other payables

Two major long-term property leases were entered into where significant lease incentives were provided by the property owners. These incentives are recorded as liabilities and released as an offset against expenditure over the term of the relevant lease.

Employee provisions

Employee provisions are below budget due to lower than budgeted employee expenses, and the resignation of long standing members with significant leave balances during the last two financial years which were not reflected in the budget papers.

Retained surplus/(Accumulated deficit)

The retained surplus variance to original budget papers is due to higher than expected depreciation charges in the 2016-17 and 2017-18 financial years. The revaluation was not completed until after the 2017-18 budget was published.

Statement of Changes in Equity
for the period ended 30 June 2018

	2018 \$'000	2017 \$'000	Original Budget \$'000
CONTRIBUTED EQUITY			
Opening balance	43,538	40,979	46,151
Transactions with owners			
Contributions by owners			
Equity injection	-	150	-
Departmental capital budget	2,382	2,409	2,382
Total transactions with owners	2,382	2,559	2,382
Closing balance as at 30 June	45,920	43,538	48,533
RETAINED EARNINGS			
Opening balance	(8,185)	(4,378)	(7,267)
Comprehensive income			
Surplus/(Deficit) for the period	(6,145)	(3,807)	(2,829)
Total comprehensive income	(6,145)	(3,807)	(2,829)
Closing balance as at 30 June	(14,330)	(8,185)	(10,096)
ASSET REVALUATION RESERVE			
Opening balance	12,410	262	262
Comprehensive income			
Other comprehensive income	-	12,148	-
Total comprehensive income	-	12,148	-
Closing balance as at 30 June	12,410	12,410	262

Appendix E: Financial statements (cont.)**Statement of Changes in Equity**
for the period ended 30 June 2018

	2018	2017	Original Budget
	\$'000	\$'000	\$'000
TOTAL EQUITY			
Opening balance	47,763	36,863	39,146
Comprehensive income			
Surplus/(Deficit) for the period	(6,145)	(3,807)	(2,829)
Other comprehensive income	-	12,148	-
Total comprehensive income	(6,145)	8,341	(2,829)
Transactions with owners			
Contributions by owners			
Equity injection	-	150	-
Departmental capital budget	2,382	2,409	2,382
Total transactions with owners	2,382	2,559	2,382
Closing balance as at 30 June	44,000	47,763	38,699

The above statement should be read in conjunction with the accompanying notes.

Accounting Policy*Equity 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.

Surplus/(Deficit) for the period

The retained deficit variance to original budget papers is due to higher than expected depreciation charges in the 2016-17 and 2017-18 financial years. An independent valuation was conducted at the end of the 2016-17 financial year, and the expected useful life of assets adjusted. The valuation was not completed until after the 2017-18 budget was published.

Total Equity - Opening balance

The variance is due to the independent valuation of non-financial assets and adjustments to useful life assessments being made after the Original Budget was prepared.

Cash Flow Statement

for the period ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
OPERATING ACTIVITIES				
Cash received				
Appropriations		73,797	81,287	73,651
Sale of goods and rendering of services		2,279	3,096	2,400
Net GST received		3,600	3,687	2,245
Total cash received		79,676	88,070	78,296
Cash used				
Employees		(45,975)	(52,369)	(49,665)
Suppliers		(29,918)	(37,620)	(26,831)
Total cash used		(75,893)	(89,989)	(76,496)
Net cash from/(used by) operating activities		3,783	(1,919)	1,800
INVESTING ACTIVITIES				
Cash used				
Purchase of leasehold improvements		(1,388)	(30)	(1,600)
Purchase of property, plant and equipment		(731)	(1,144)	(482)
Purchase of computer software		(3,485)	(254)	(2,100)
Total cash used		(5,604)	(1,428)	(4,182)
Net cash from / (used by) investing activities		(5,604)	(1,428)	(4,182)
FINANCING ACTIVITIES				
Cash received				
Equity injection		-	150	-
Departmental capital budget		2,382	2,409	2,382
Total cash received		2,382	2,559	2,382
Net cash from/(used by) financing activities		2,382	2,559	2,382
Net increase/(decrease) in cash held		561	(788)	-
Cash and cash equivalents at the beginning of the reporting period		1	789	789
Cash and cash equivalents at the end of the reporting period	3.1A	562	1	789

The above statement should be read in conjunction with the accompanying notes.

Appendix E: 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.

Employees

The variance in cash used for employees is due to lower than budgeted payments for Judges long leave and long service leave.

Suppliers

The variance in payments for suppliers is due to higher than budgeted property costs, and the utilisation of specialised agency staff to meet short term demands.

Administered Schedule of Comprehensive Income

for the period ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Income				
Revenue				
Non-taxation revenue				
Application fees received		1,159	1,168	578
Less refunds of application fees		(500)	(555)	-
Total non-taxation revenue	2.1A	<u>659</u>	<u>613</u>	<u>578</u>
Surplus/(Deficit)		<u>659</u>	<u>613</u>	<u>578</u>

The above schedule should be read in conjunction with the accompanying notes.

Administered Schedule of Assets and Liabilities

as at 30 June 2018

As at 30 June 2018, there were no administered assets and liabilities (2017: nil).

Appendix E: Financial statements (cont.)

Administered Reconciliation Schedule				
	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
Opening assets less liabilities as at 1 July		-	-	-
Net (cost of)/contribution by services				
Income		659	613	-
Other comprehensive income		-	-	-
Transfers (to)/from Australian Government				
Appropriation transfers from Official Public Account				
Annual appropriations				
Payments to entities other than corporate Commonwealth entities		500	555	-
Appropriation transfers to OPA				
Transfers to OPA		(1,159)	(1,168)	-
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 2018

	Notes	2018 \$'000	2017 \$'000	Original Budget \$'000
OPERATING ACTIVITIES				
Cash received				
Application fees received		1,159	1,168	578
Total cash received		1,159	1,168	578
Cash used				
Refunds of application fees		(500)	(555)	-
Total cash used		(500)	(555)	-
Net cash from operating activities		659	613	578
Cash from Official Public Account				
Refunds of application fees		500	555	-
Total cash from official public account		500	555	-
Cash to Official Public Account				
Application fees received		(1,159)	(1,168)	(578)
Total cash to official public account		(1,159)	(1,168)	(578)
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: Financial statements (cont.)**Notes to the financial statements****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) for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations 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

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.

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 policies as for departmental items, including the application of Australian Accounting Standards.

Events after the Reporting Period**Departmental**

Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2015-16 was repealed on the 1st of July 2018 and is no longer available for use by the Fair Work Commission. The balance of unspent appropriations repealed was \$818,199.60.

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 2018.

1.1 Expenses

	2018	2017
	\$'000	\$'000
1.1A: Employee benefits		
Wages and salaries	36,797	37,965
Superannuation:		
Defined contribution plans	4,106	4,093
Defined benefit plans	1,656	1,776
Leave and other entitlements	3,900	2,945
Separation and redundancies	184	604
Other employee expenses	159	366
Total employee benefits	46,802	47,749

Accounting Policy

Accounting policies for employee related expenses is contained in the People and Relationships section.

1.1B: Suppliers

Goods and services supplied or rendered

Court/member services	3,388	3,501
Information Communications Technology	3,341	3,509
Property expenses	3,611	3,134
Office expense	1,051	1,009
Contractors	5,124	7,648
Other	423	410
Total goods and services supplied or rendered	16,938	19,211

Goods supplied	1,015	928
Services rendered	15,923	18,283
Total goods and services supplied or rendered	16,938	19,211

Other suppliers

Operating lease rentals in connection with minimum lease payments	12,404	12,655
Workers compensation expenses	129	229
Total other suppliers	12,533	12,884
Total suppliers	29,471	32,095

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 and IT related leases.

Appendix E: Financial statements (cont.)

	2018	2017
	\$'000	\$'000
Commitments for minimum lease payment in relation to non-cancellable operating leases are payable as follows:		
Within 1 year	13,265	14,515
Between 1 to 5 years	49,752	51,711
More than 5 years	37,925	43,646
Total operating lease commitments	100,942	109,872

Accounting Policy

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

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

	2018	2017
	\$'000	\$'000

Own-Source Revenue

1.2A: Sale of Goods and Rendering of Services

Rendering of services	108	409
Total sale of goods and rendering of services	108	409

Accounting Policy

Revenue from the sale of goods is recognised when:

- a) the risks and rewards of ownership have been transferred to the buyer;
- b) the entity retains no managerial involvement or effective control over the goods.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

1.2B: Rental Income

Operating lease		
Sublease of property	2,055	2,409
Total rental income	2,055	2,409

Subleasing rental income commitments

The Fair Work Commission in its capacity as lessor received rental income from subleasing part of the Sydney office and Level 9 Melbourne office during the 2017-18 financial year. The sublease for the Melbourne office ceased in November 2017.

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:

- a) the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- b) 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	1,981	2,138
Between 1 to 5 years	6,383	8,364
Total subleasing rental income commitments	8,364	10,502

Appendix E: Financial statements (cont.)

	2018 \$'000	2017 \$'000
1.2C: Other Revenue		
Resources received free of charge		
Remuneration of auditors	55	55
Other – vehicle contributions	25	28
Total other revenue	80	83

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.

1.2D: Revenue from Government

Appropriations		
Departmental appropriations	74,133	78,099
Total revenue from Government	74,133	78,099

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.

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 – Income

	2018 \$'000	2017 \$'000
Revenue		
Non-Taxation Revenue		
2.1A: Fees		
Application fees received	1,159	1,168
Less: Refunds of application fees	<u>(500)</u>	<u>(555)</u>
Total fees	<u>659</u>	<u>613</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: 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

	2018 \$'000	2017 \$'000
3.1A: Cash and Cash Equivalents		
Cash on hand or on deposit	562	1
Total cash and cash equivalents	562	1
3.1B: Trade and Other Receivables		
Goods and services receivables		
Goods and services	84	147
Total goods and services receivables	84	147
Appropriations receivables		
Appropriation receivable	31,363	31,027
Total appropriations receivables	31,363	31,027
Other receivables		
GST receivable	370	650
Total other receivables	370	650
Total trade and other receivables (gross)	31,817	31,824
Less impairment allowance	-	-
Total trade and other receivables (net)	31,817	31,824

Credit terms for goods and services are payment within 30 days (2017: 30 days).

Accounting Policy*Receivables*

Trade receivables and other receivables that have fixed or determinable payments and that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment.

3.2 Non-Financial Assets

3.2A: 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 2017				
Gross book value	24,209	4,628	4,630	33,467
Accumulated amortisation and impairment	-	-	(3,101)	(3,101)
Total as at 1 July 2017	24,209	4,628	1,529	30,366
Additions				
Purchase	1,388	731	52	2,171
Internally developed	-	-	3,432	3,432
Depreciation and amortisation	(3,966)	(1,263)	(1,001)	(6,230)
Disposals	-	(18)	-	(18)
Total as at 30 June 2018	21,631	4,078	4,012	29,721
Total as at 30 June 2018 represented by				
Gross book value	25,597	5,339	8,114	39,050
Accumulated depreciation, amortisation and impairment	(3,966)	(1,261)	(4,102)	(9,329)
Total as at 30 June 2018	21,631	4,078	4,012	29,721

1. The carrying amount of computer software included \$164,285.48 purchased software and \$3,847,331.87 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.

During 2017-18 the Commission developed a new case management system (eCase) which went live on the 20th of August 2018. Performance issues were encountered and a decision was made to pause the rollout and temporarily revert back to the previous case management system. Management remains committed to eCase, and believes the decision to pause rollout does not result in an impairment of the asset.

Appendix E: Financial statements (cont.)

<p>Accounting Policy</p> <p>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.</p> <p>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.</p> <p><u>Asset Recognition Threshold</u></p> <p>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).</p> <p>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.</p> <p><u>Revaluations</u></p> <p>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.</p> <p>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.</p> <p>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.</p>	<p><u>Depreciation</u></p> <p>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.</p> <p>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.</p> <p>Depreciation rates applying to each class of depreciable asset are based on the following useful lives:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th>2018</th> <th>2017</th> </tr> </thead> <tbody> <tr> <td>Leasehold</td> <td></td> <td></td> </tr> <tr> <td>Improvements</td> <td>Lease term</td> <td>Lease term</td> </tr> <tr> <td>Plant and equipment</td> <td>3 to 10 years</td> <td>3 to 10 years</td> </tr> </tbody> </table> <p><u>Impairment</u></p> <p>All assets were assessed for impairment at 30 June 2018. 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.</p> <p>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.</p> <p><u>Derecognition</u></p> <p>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.</p> <p><u>Intangibles</u></p> <p>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.</p> <p>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 (2017: 3 to 10 years).</p> <p>All software assets were assessed for indications of impairment as at 30 June 2018.</p>		2018	2017	Leasehold			Improvements	Lease term	Lease term	Plant and equipment	3 to 10 years	3 to 10 years
	2018	2017											
Leasehold													
Improvements	Lease term	Lease term											
Plant and equipment	3 to 10 years	3 to 10 years											

	2018	2017
	\$'000	\$'000
<u>3.2B: Other Non-Financial Assets</u>		
Prepayments	2,077	2,119
Lease incentive	12,162	2,090
Lease receivables	442	403
Total other non-financial assets	<u>14,681</u>	<u>4,612</u>

No indicators of impairment were found for other non-financial assets.

Appendix E: Financial statements (cont.)**3.3 Payables**

	2018	2017
	\$'000	\$'000
3.3A: Suppliers		
Trade creditors and accruals	2,143	1,426
Total suppliers	2,143	1,426

Settlement terms for suppliers are 30 days.

3.3B: Other payables

Salaries and wages	293	344
Superannuation	31	29
Lease payable	2,911	2,591
Lease incentives	13,784	1,907
Income earned in advance	-	1
Total other payables	17,019	4,872

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 2018, there were no administered financial assets and liabilities that required disclosure (2017: nil).

Appendix E: 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 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. 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 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.

Annual Appropriations for 2017

	Annual Appropriation ¹ \$'000	Adjustments to Appropriation ² \$'000	Total Appropriation \$'000	Appropriation applied in 2017 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	78,099	2,846	80,945	82,305	(1,360)
Capital Budget ⁴	2,409	-	2,409	1,542	867
Other services					
Equity Injections	150	-	150	-	150
Total departmental	80,658	2,846	83,504	83,847	(343)

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 2017 relates to payments funded from unspent prior 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: Financial statements (cont.)**5.1B: Unspent Annual Appropriations ('Recoverable GST exclusive')**

	2018 \$'000	2017 \$'000
Departmental		
Appropriation Act (No.1) 2016-17	-	7
Supply Act (No.1) 2016-17	-	23,388
Appropriation Act (No. 3) 2016-17	-	4,256
Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2015-16	818	818
Appropriation Act (No.1) – Capital Budget (DCB) Non-operating 2016-17	-	1,405
Supply Act (No.1) – Capital Budget (DCB) Non-operating 2016-17	-	1,004
Act (No.2) – Non-operating – Equity Injection(No.2) 2016-17	-	150
Appropriation Act (No.1) 2017-18	31,107	-
Total departmental	31,925	31,028

5.1C: Special Appropriations ('Recoverable GST exclusive')

Authority	Appropriation applied	
	2018 \$'000	2017 \$'000
<i>Public Governance, Performance and Accountability Act 2013 s.77, Administered</i>	(500)	(555)
Total special appropriations applied	(500)	(555)

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 2018 \$'000
2018	
Total Receipts	7,219
Total Payments	(7,219)
	Department of Finance – to make payment to beneficiaries under the Judges Pension Scheme 2017 \$'000
2017	
Total Receipts	6,850
Total Payments	(6,850)

5.2 Net Cash Appropriation Arrangements

	2018 \$'000	2017 \$'000
Total comprehensive income/(loss) less depreciation/amortisation expenses previously funded through revenue appropriations	85	1,140
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(6,230)	(4,947)
Total comprehensive income/(loss) - as per the Statement of Comprehensive Income	(6,145)	(3,807)

Appendix E: 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

	2018 \$'000	2017 \$'000
6.1A: Employee Provisions		
Leave	13,451	12,608
Separations and redundancies	79	45
Total employee provisions	13,530	12,653

6.1B: Administered – Employee Provisions

As at 30 June 2018, there were no administered employee provisions (2017: 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 2018 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: 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:

	2018	2017
	\$'000	\$'000
Short-term employee benefits	957	1,057
Post-employment benefits	123	142
Other long-term employee benefits	104	117
Total key management personnel remuneration expenses¹	1,184	1,316

The total numbers of key management personnel that are included in the above table are 4 (2017: 5).

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 (2017: nil).

Appendix E: 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 2018, there were no quantifiable contingent liabilities or assets requiring disclosure (2017: nil).

Unquantifiable Contingencies

As at 30 June 2018, there were no unquantifiable contingent liabilities or assets requiring disclosure (2017: 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 2018, there were no administered contingent assets or liabilities that required disclosure (2017: nil).

Appendix E: Financial statements (cont.)**7.2: Financial Instruments**

	2018	2017
	\$'000	\$'000
7.2A: Categories of Financial Instruments		
Financial Assets		
Loans and receivables		
Cash and cash equivalents	562	1
Trade and other receivables	84	147
Total loans and receivables	646	148
Total financial assets	646	148
Financial Liabilities		
Financial liabilities measured at amortised cost		
Trade creditors and accruals	2,143	1,426
Total financial liabilities measured at amortised cost	2,143	1,426
Total financial liabilities	2,143	1,426

Accounting Policy**Financial assets**

The Fair Work Commission classifies its financial assets in the following categories:

- a) financial assets at fair value through profit or loss; and
- b) loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

Effective Interest Method

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting period.

Financial liabilities

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'.

Other Financial Liabilities

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).

7.3: Administered – Financial Instruments

As at 30 June 2018, there were no administered financial instruments that required disclosure (2017: nil).

Appendix E: Financial statements (cont.)**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	
	2018	2017
	\$'000	\$'000
Non-financial assets ²		
Plant and Equipment ¹	4,078	4,628
Leasehold Improvements ¹	21,631	24,209
Total Non-financial assets	25,709	28,837

1. No non-financial assets were measured at fair value on a non-recurring basis as at 30 June 2018 (2017: nil). During 2017-18 the Fair Work Commission entered into long-term leasing commitments for two major leaseholds. An independent valuation was conducted to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The value of leasehold improvements increased as the assets were assessed as being in good condition, and the useful lives estimate of the assets were extended.
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.

7.5 Administered - Fair Value Measurement

As at 30 June 2018, there was no administered fair value measurement that required disclosure (2017: nil).

Appendix E: Financial statements (cont.)**Other Information****8.1: Restructuring**

	2018	2017
	Registered Organisations Commission ¹	Registered Organisations Commission ¹
	\$'000	\$'000
FUNCTIONS RELINQUISHED		
Assets relinquished		
Total assets relinquished	-	-
Liabilities relinquished		
Employees leave liabilities	-	(466)
Total liabilities relinquished	-	(466)
Net (liabilities) relinquished ²	-	(466)

1. The functions associated with the regulation of registered organisations were assumed from the Fair Work Commission on 1 May 2017 with the establishment of the Registered Organisations Commission.
2. The net liabilities transferred from the Fair Work Commission to the Fair Work Ombudsman and Registered Organisations Commission Entity were \$465,993.

The Registered Organisations Commission was established under the Fair Work (Registered Organisations) Amendment Act 2016 and assumed the investigation, enforcement, advice and assistance responsibilities in relation to registered organisations previously undertaken within the Fair Work Commission. Staff from the Commission's Regulatory Compliance branch was transferred from the Fair Work Commission to the Fair Work Ombudsman and Registered Organisations Commission Entity under a Machinery of Government change.

The Fair Work Commission retains its functions under the *Fair Work (Registered Organisations) Act 2009* concerning the registration, amalgamation and deregistration of registered organisations and the approval of their rules.

The costs incurred by the Fair Work Commission in carrying out the functions that were transferred for the financial year to 30 April 2017 was \$3.165 million.

Appendix F: Entity resources

Table F1: Fair Work Commission resource statement 2017–18

	Actual available appro- piation for 2017–18 \$'000	Payments made 2017–18 \$'000	Balance remaining 2017–18 \$'000
	(a)	(b)	(a)–(b)
Ordinary annual services ¹			
Departmental appropriation ²	109,786	77,861	31,925
Total ordinary annual services	109,786	77,861	31,925
Total available annual appropriations and payments	109,786	77,861	31,925
Total net resourcing and payments for Fair Work Commission	109,786	77,861	31,925

1 Appropriation Act (No. 1) 2017–18 and prior-year departmental appropriations and section 74 retained revenue receipts.

2 Includes an amount of \$2.382 million in 2017–18 for the departmental capital budget. For accounting purposes, this amount has been designated as 'contributions by owners'.

Appendix F: Entity resources (cont.)**Table F2: Fair Work Commission expenses by outcomes 2017–18**

	Budget* 2017–18 \$'000	Actual expenses 2017–18 \$'000	Variation 2017–18 \$'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	76,536	76,236	300
Expenses not requiring appropriation in the budget year ²	2,884	6,285	(3,401)
Total for Program 1.1	79,420	82,521	(3,101)
Outcome 1 totals by appropriation type			
Departmental expenses			
Departmental appropriation ¹	76,536	76,236	300
Expenses not requiring appropriation in the budget year ²	2,884	6,285	(3,401)
Total expenses for Outcome 1	79,420	82,521	(3,101)
	2017–18	2017–18	Variation 2017–18
Average staffing level (number)	314	307	7

* Full-year budget, including any subsequent adjustment made to the 2017–18 budget at Additional Estimates.

1 Departmental appropriation combines ordinary annual services (Appropriation Act No. 1) and retained revenue receipts under section 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. The committee met on three occasions in 2017–18.

Initiatives

In 2017–18, 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.

Outcomes

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. The Commission's workers compensation premium rate was reduced to 0.29 per cent in 2017–18, well below the scheme average premium rate of 1.23 per cent for 2017–18.

In 2017–18, the Commission did not receive any new compensation claims, and had one ongoing claim. A total of 14 accidents or incidents involving employees or other parties were reported, compared with 24 in 2016–17.

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 2017–18.

Appendix G: Other mandatory information (cont.)

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 2017–18.

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 2017–18.

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 \$13,200 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 2017–18.

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. All showers are fitted with energy efficient T5 lighting and shower timers.

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

Description	Ref
Letter of transmittal	1
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Overview of the entity	
Role and functions	11
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Outcomes and programs administered	95
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Portfolio structure	N/A
Where the outcome 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, details of variation and reasons for change	N/A

Appendix H: List of requirements (cont.)

Description	Ref
Report on the performance of the entity	
Annual performance statements	93–100
Report on financial performance	
Discussion and analysis of financial performance	112
Table summarising total resources and total payments	189–190
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.	N/A
Management and accountability	
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Description	Ref
Assessment of effectiveness of assets management	111
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A statement that '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 expenditure of \$[specified million]'.	111
Policies and procedures for selecting and engaging consultants, and main categories of purposes for which consultants were selected and engaged	111
A statement that '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.'	111
If an entity entered into a contract with a value of more than \$10,000 (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.	111
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.	111
A statement that '[Name of entity] 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.'	112
An outline of the ways in which the procurement practices of the entity support small and medium enterprises	112
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.'	N/A

Appendix H: List of requirements (cont.)

Description	Ref
Financial statements	
Inclusion of the annual financial statements in accordance with subsection 43(4) of the PGPA Act	146–188
Other mandatory information	
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.'	N/A
If the entity did not conduct advertising campaigns, a statement to that effect	113
A statement that 'Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity's website].'	113
Outline of mechanisms of disability reporting, including reference to website for further information	113
Website reference to where the entity's Information Publication Scheme statement pursuant to Part II of FOI Act can be found	113
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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.

Glossary (cont.)

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.

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

APS	Australian Public Service
BOOT	better off overall test
Commission	Fair Work Commission
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
IPS	Information Publication Scheme
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>
Registered Organisations Act (ROA)	<i>Fair Work (Registered Organisations) Act 2009</i>
SES	Senior Executive Service
SME	small and medium enterprise
WHS Act (WHS Act)	<i>Work Health and Safety Act 2011</i>

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