



FairWork  
Commission

# FAIR WORK COMMISSION 2015 CHALLENGES, CHANGES AND INNOVATION

AHEIA Annual Conference

14 May 2015

Vice President Catanzariti

# Agenda

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- General protections conciliation pilot
- Enterprise agreements pilot
- Permission to appeal pilot
- Access to audio files
- Efficiency and innovation
- Small business initiatives
- New Approaches
- Workplace bullying
- Section 365

# Future Directions II 2014–2015

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- Launched in early 2014
- 30 initiatives that will be progressively delivered
- To provide a ‘fair, accessible, efficient dispute resolution service’
- Four themes
  - Promoting fairness and improving access
  - Efficiency and innovation
  - Increasing accountability
  - Productivity and engaging with industry



# General protections conciliation pilot

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- Piloting a new approach to dealing with general protections disputes
- Commenced 1 September 2014
- Modelled on unfair dismissal case management model
- Expert team of staff conciliators experienced in dispute resolution operating under delegation
- Telephone based – no need to attend the Commission in person



# General protections conciliation pilot

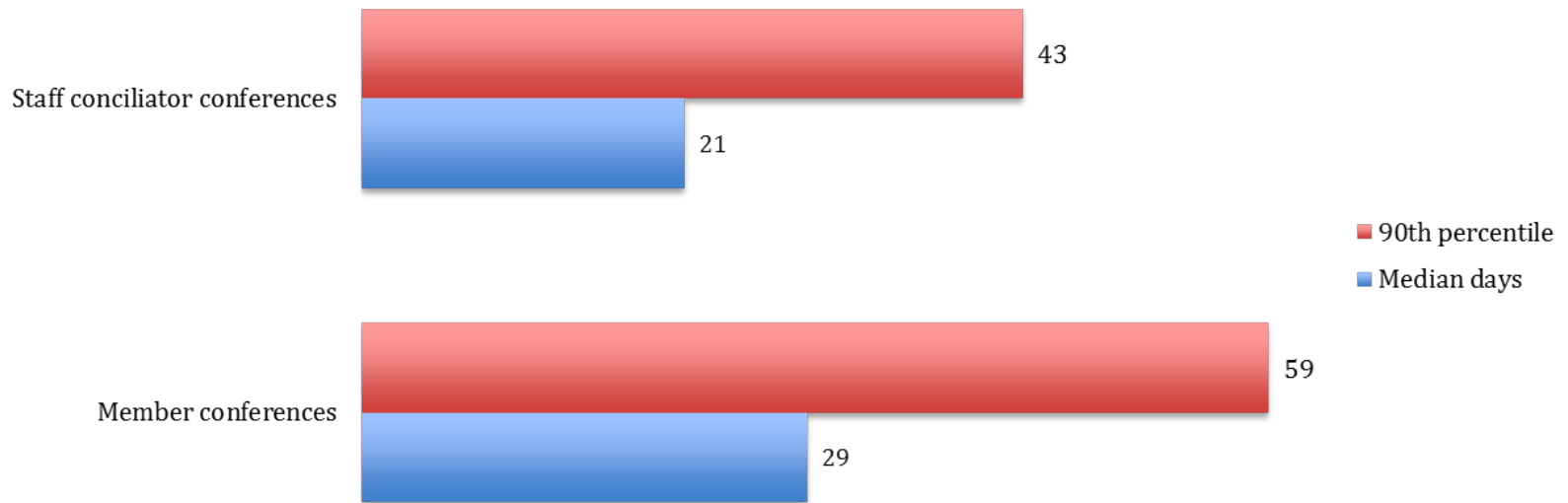
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- Staff conciliators conduct conferences in WA, ACT and QLD- overseen by DP Kovacic
- Timeliness (lodgment → conciliation)
  - median: 21 days (prev. 29 days)
  - 90%: 43 days (prev. 59 days)
- Settlement rate
  - 73%
  - (prev. 60%)
- Satisfaction:
  - 68% satisfied or very satisfied

# General protections pilot - results

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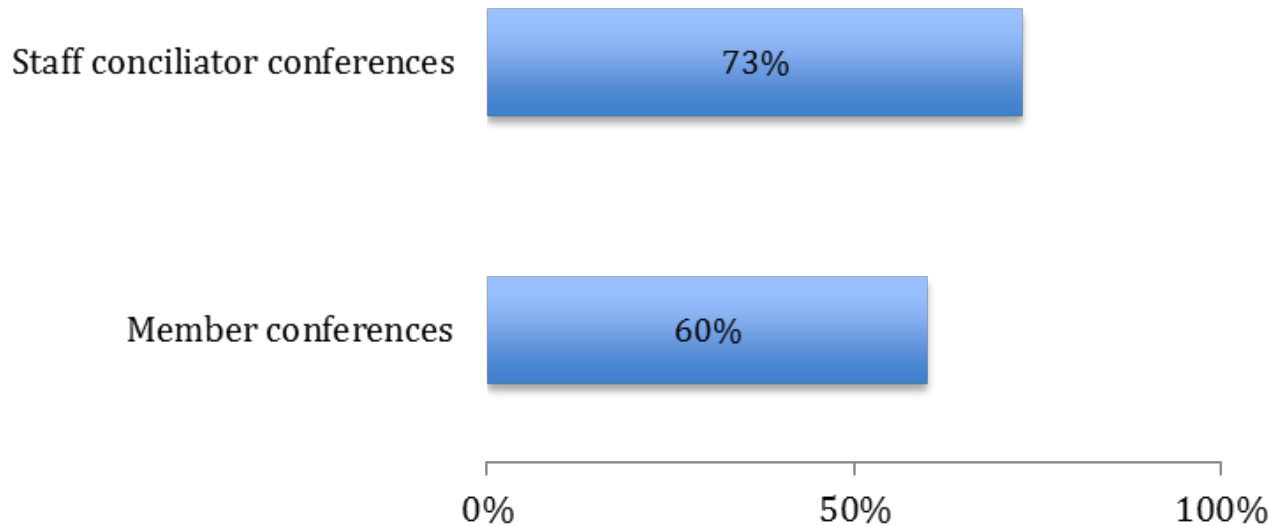
Measure 1: reduce time between application lodgment and conference



# General protections pilot - results

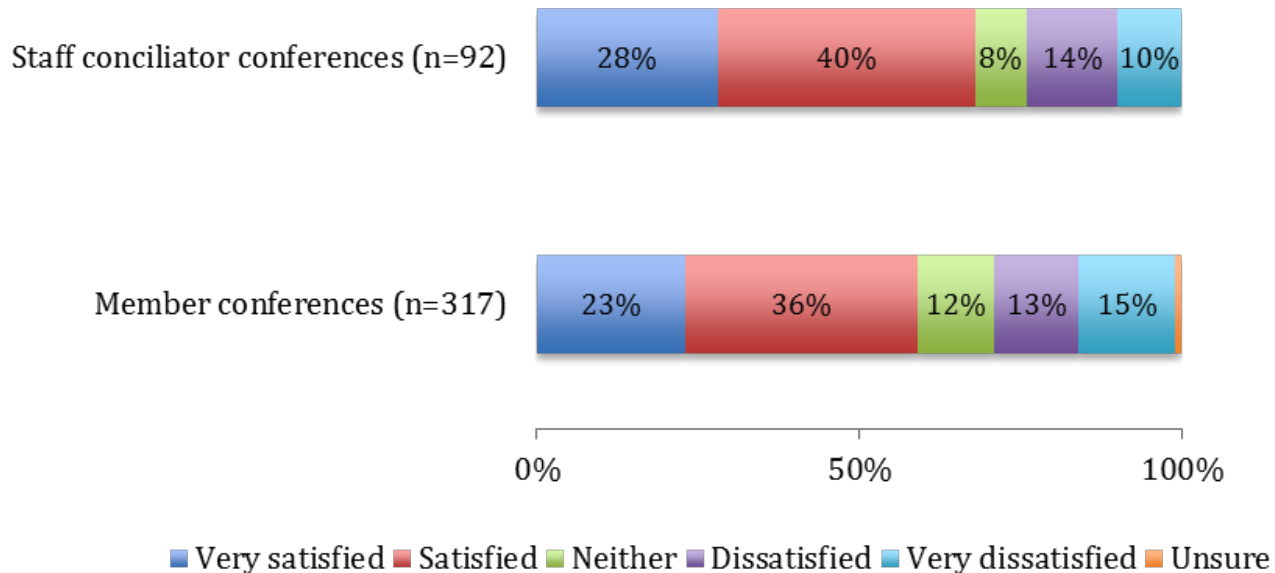
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Measure 2 : General Protections matter settlement rate for Members (Jul-Dec 2014) and staff conciliators (1 Sept 2014 to 31 March 2015)



# General protections pilot - results

## Measure 3: Overall satisfaction with general protections conferences (staff conciliator and Member conferences)





# Enterprise agreements pilot

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- Piloting a new approach to approving enterprise agreements
- Preliminary assessment performed by expert team of Commission staff
- Streamlined member approval process
- Success will be measured by
  - Gains in timeliness, accuracy and consistency
  - Increases in productivity and savings for the Commission
  - Analysis of risks associated with the process



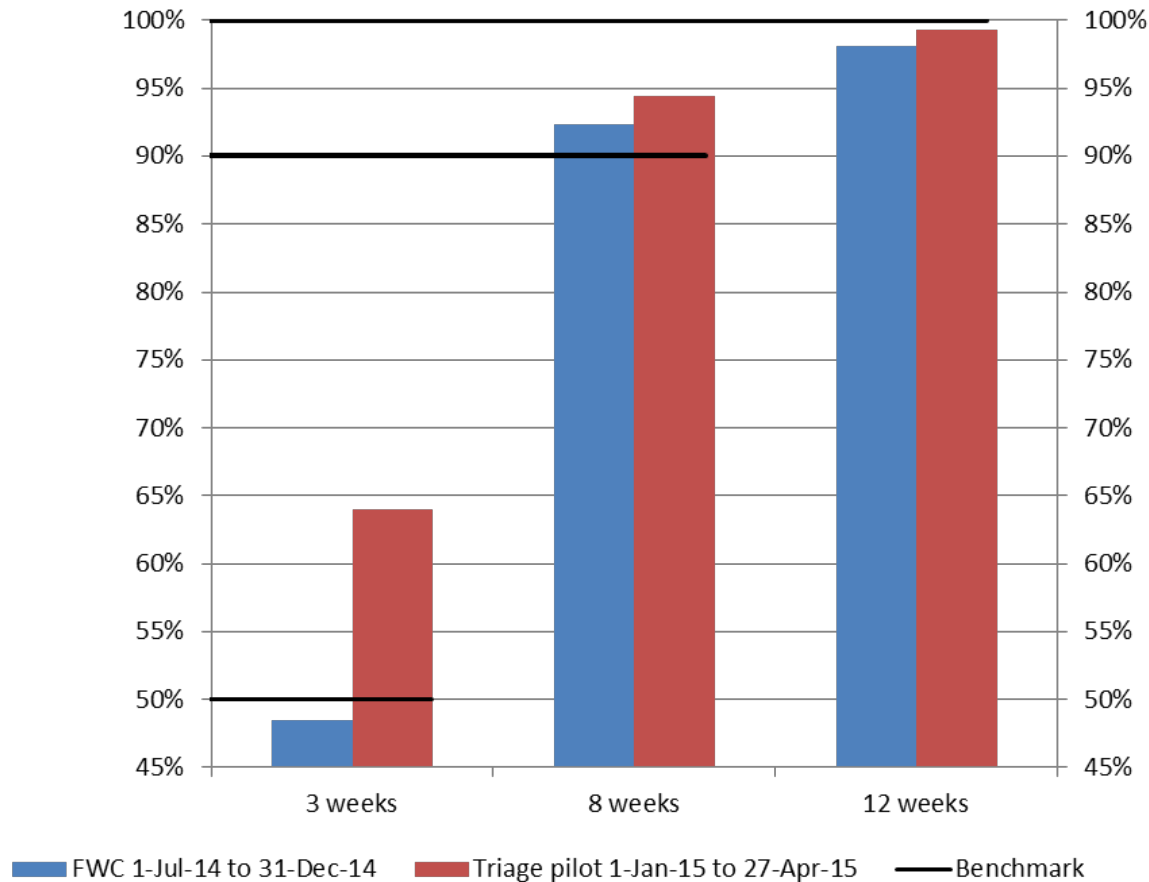
# Enterprise agreements pilot

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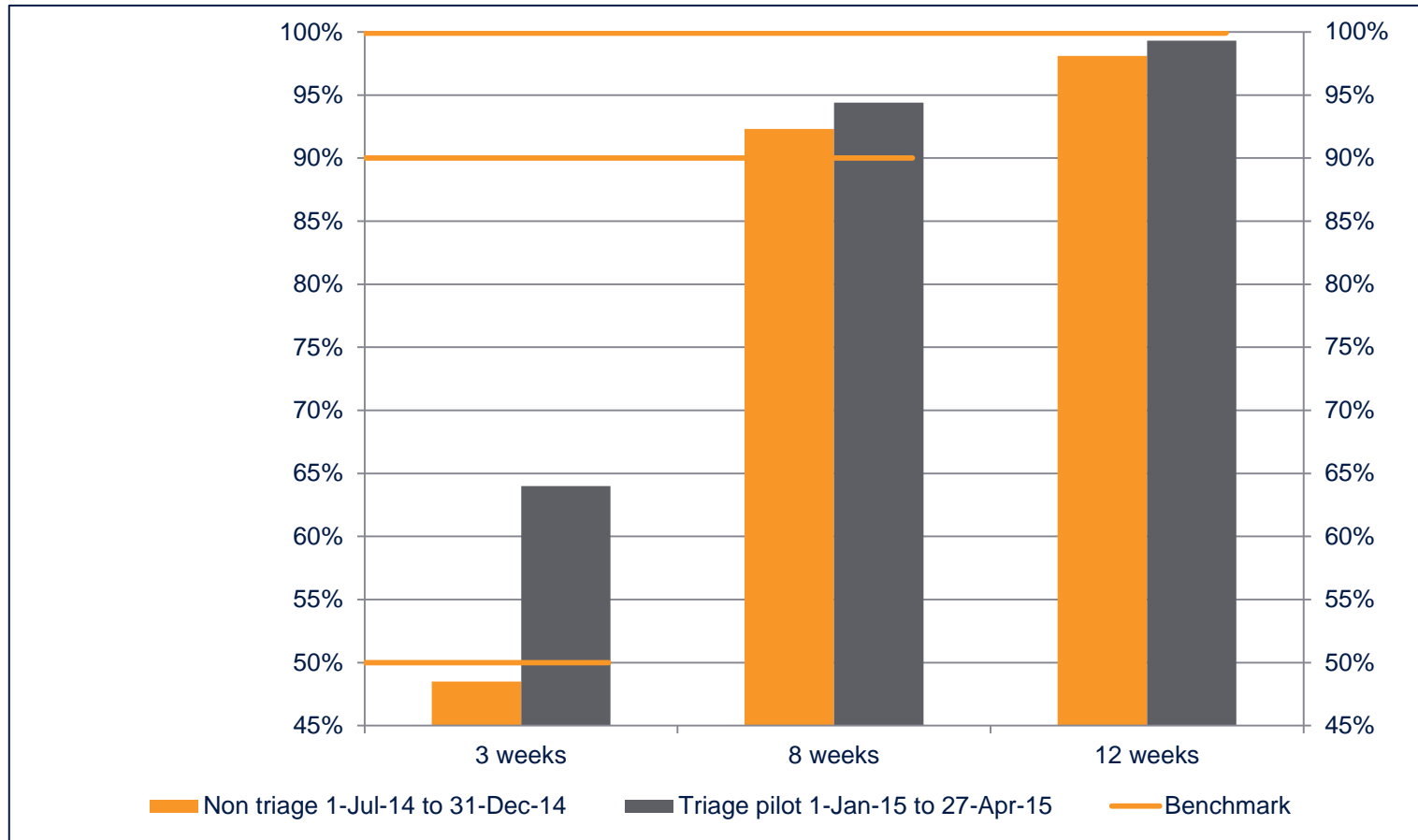
- Commenced on 6 October 2014
- Staff prepare initial assessment for a Deputy President, including
  - Pre-approval requirements
  - Mandatory terms
  - National employment standards
  - Better off overall test
- Early results are promising

# Enterprise agreement pilot results

## Measure 1: Timeliness

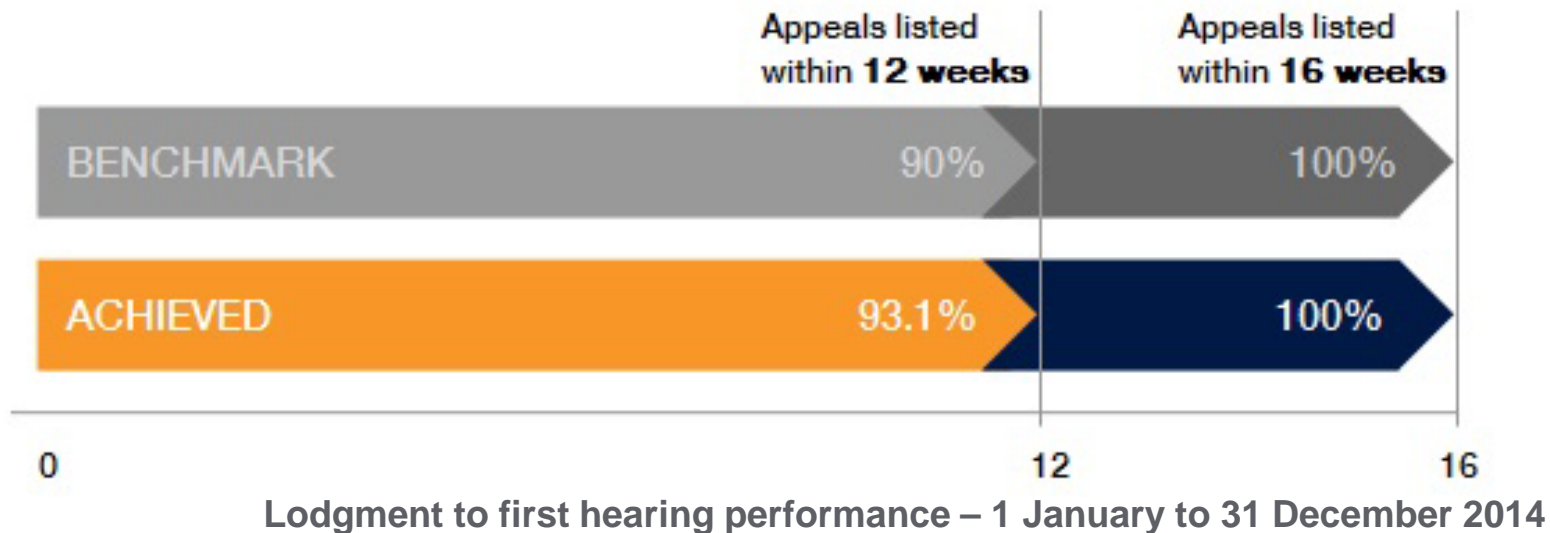


# Percentage of agreement applications finalised within 12 weeks of lodgment



# Improving performance in appeals

- The Commission has taken a number of steps to improve the efficiency of the appeal process
- Including
  - Appeal proceedings practice note
  - Timeliness benchmarks established to ensure appeals are heard and determined in a timely and efficient manner



# Improving performance in appeals

- Permission to appeal refused in most unfair dismissals
- Permission to appeal pilot commenced in December 2014 – early results promising
- All appeals will be considered – most unfair dismissals likely to be included
- Introduces a separate, early hearing to determine whether permission to appeal should be granted
- Aimed at reducing costs and burden on parties
  - Appellant and respondent – right to appeal confirmed prior to preparation of extensive material
  - Commission – streamlined process
- Pilot will be evaluated after 12 months' operation
- Jan to March 2015 – 33 appeals
- 70% permission refused
- 30% permission granted – appeal usually dealt with in the same hearing





# Permission to appeal pilot

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- Introduces a separate, early hearing to determine whether permission to appeal should be granted
- Aimed at reducing costs and burden on parties
  - Appellant and respondent – right to appeal confirmed prior to preparation of extensive material
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- Pilot will be evaluated after 12 months' operation

# Access to audio files

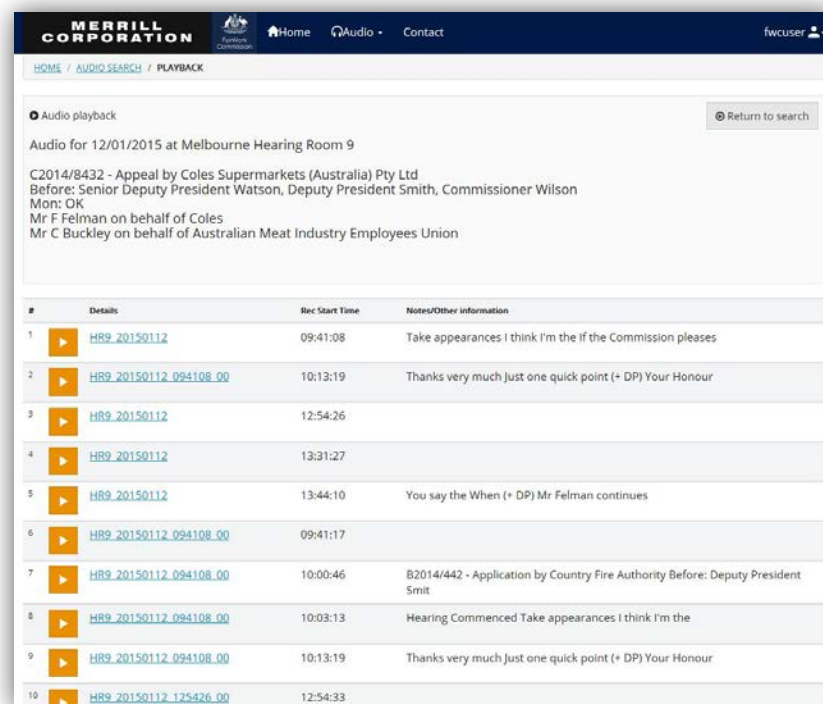
## Internal access

- All monitored proceedings available to all Members and staff within an hour of conclusion

## External access

Protocols being developed so

- Parties can access free, secure and timely audio of individual proceedings online
- Public can access audio of major proceedings online



The screenshot displays the Merrill Corporation audio playback interface. The header includes the Merrill Corporation logo, the Australian Fair Work Commission logo, and navigation links for Home, Audio, and Contact. The user is logged in as 'fwcuser'. The main content area shows 'Audio playback' for a specific hearing on 12/01/2015 at Melbourne Hearing Room 9. The case details are: C2014/8432 - Appeal by Coles Supermarkets (Australia) Pty Ltd, Before: Senior Deputy President Watson, Deputy President Smith, Commissioner Wilson. The participants listed are Mr F Felman on behalf of Coles and Mr C Buckley on behalf of Australian Meat Industry Employees Union. Below this is a table of audio files with columns for #, Details, Rec Start Time, and Notes/Other information.

#	Details	Rec Start Time	Notes/Other information
1	<a href="#">HR9_20150112</a>	09:41:08	Take appearances I think I'm the If the Commission pleases
2	<a href="#">HR9_20150112_094108_00</a>	10:13:19	Thanks very much Just one quick point (+ DP) Your Honour
3	<a href="#">HR9_20150112</a>	12:54:26	
4	<a href="#">HR9_20150112</a>	13:31:27	
5	<a href="#">HR9_20150112</a>	13:44:10	You say the When (+ DP) Mr Felman continues
6	<a href="#">HR9_20150112_094108_00</a>	09:41:17	
7	<a href="#">HR9_20150112_094108_00</a>	10:00:46	B2014/442 - Application by Country Fire Authority Before: Deputy President Smit
8	<a href="#">HR9_20150112_094108_00</a>	10:03:13	Hearing Commenced Take appearances I think I'm the
9	<a href="#">HR9_20150112_094108_00</a>	10:13:19	Thanks very much Just one quick point (+ DP) Your Honour
10	<a href="#">HR9_20150112_125426_00</a>	12:54:33	



# Efficiency and innovation

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- Wi-Fi access for general public in all states and territories
- SMS alerts for hearings and submissions
- Bulk lodgment and handling of applications




# Reaching out to small business

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- Development of the Commission's small business engagement strategy is underway
- Our initial focus is on improving tools for small business about
  - Agreement making
  - Individual flexibility arrangements (IFAs)
  - Responding to unfair dismissal applications
- The Commission will work closely with small business stakeholders and the Fair Work Ombudsman to develop a suite of reliable, easy to use resources

# Notice of representational rights



## Guide

### Notice of employee representational rights

#### Employer must notify employees

In accordance with s.173 of the *Fair Work Act 2009* (the Act) an employer that will be covered by a proposed enterprise agreement that is not a greenfields agreement must take all reasonable steps to give notice of the right to be represented by a bargaining representative (the notice) to each employee who will be covered by the agreement and is employed at the notification time for the agreement. The notice must be given as soon as practicable, and not later than 14 days after the notification time for the agreement. If the notice is not provided within the prescribed time, the agreement cannot be approved.

Notification time is the time when:

- The employer agrees to bargain, or initiates bargaining for the agreement; or
- A majority support determination in relation to the agreement comes into operation;<sup>1</sup> or
- A scope order in relation to the agreement comes into operation;<sup>2</sup> or
- A low-paid authorisation in relation to the agreement comes into operation.<sup>3</sup>

The Act states that the notice must contain the content prescribed by the *Fair Work Regulations 2009* (the Regulations), must not contain any other content and must be in the form prescribed by the Regulations.

Schedule 2.1 to the Regulations contains the notice template. The Fair Work Commission (the Commission) has held<sup>4</sup> that there is no capacity to depart from the form and content of the notice template provided in the Regulations. Any departure from the form or content will result in the notice being invalid. For example, an employer should not attach any document to the notice. The purpose of this guide is to assist in the completion of the notice.

#### Completing the notice

The notice of employee representational rights can be downloaded from the [Enterprise Bargaining page](#) of the Commission's website. Once downloaded:

- the employer must insert relevant information into the notice where required, such as the name of employer and name of the proposed agreement;

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<sup>1</sup>A majority support determination is a determination made by the Commission that a majority of the employees who will be covered by an agreement want to bargain with the employer, or employers, that will be covered by the agreement.

<sup>2</sup>A scope order is an order made by the Commission that determines the group of employees that will be covered by an agreement that will cover the employer.

<sup>3</sup>A low-paid authorisation is an authorisation made by the Commission under s.243 of the Act in relation to a proposed multi-enterprise agreement. The effect of such an authorisation is that the employers specified in it are subject to certain rules that would not otherwise apply (for example, bargaining orders that would not usually be available for multi-enterprise agreements will be available). It also permits the Commission to assist the bargaining representatives for such agreements.

<sup>4</sup>*Peabody Moorvale Pty Ltd v Construction, Forestry, Mining and Energy Union* [2014] FWCFB 2042

Published 5 March 2015 [www.fwc.gov.au](http://www.fwc.gov.au) 1/4

# New Approaches

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- Piloting a new approach to enterprise agreement negotiations and dispute resolution
- Focused on promoting cooperative and productive workplace relations, and preventing disputes
- Range of educative materials on interest-based negotiation and dispute resolution
- Members to deliver at the workplace

# Workplace Bullying

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- Key Decisions Update:
  - *Obatoki v Mallee Track Health & Community Services and Others* [2015] FWCFB 1661
  - *Applicant v Respondent* [2014] FWC 6285 and the appeal: *Applicant v Respondent* [2015] FWCFB 1972

# Section 365

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- *Neil Keep v Performance Automobiles Pty Ltd*  
[2014] FWCFB 8941



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# Thank you