

s. 22(1)(a)(ii)

From: Murray Furlong <S. 22(1)(a)(ii) @fwc.gov.au>
Sent: Friday, 27 March 2026 4:45 PM
To: DUGGAN,Simon; MANNING,Gregory
Subject: FWC workload and budget challenges
Attachments: FWC Efficiency Projects - 2026.docx

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OFFICIAL

Hi Simon and Greg,

Thanks for making the time to meet with me yesterday. Further to our conversation, I thought it would be helpful if I provided an overview of some of the major projects underway to address the Commission's unprecedented growth in workload that is occurring at a time of decreasing resources.

The growth in our dismissal jurisdictions continues:

- Unfair dismissal lodgements in January 2026 were 38% higher than the January three year average (1,308 matters lodged)
- General protections dismissal lodgements in January 2026 were 78% more than January 2025 (609 matters)

By the end of financial year 2025/26, it is likely that the Commission's total workload will have increased by over 70% in the space of 3 years.

The increase in applications is putting strain on every element of the Commission's case management performance. Examples of metrics which indicate this strain include:

- slower lodgement processing (57% of lodgements processed within 3 working days against a 90% target)
- the timeliness of approving enterprise agreements at the 50th and 90th percentiles has started to materially decline, and
- at the end of January 2026, the number of matters on hand allocated to Members was 45% higher (+1,215 matters) than the same time last year. The number of matters on hand allocated to staff was 55% more (+1,473 matters) than the same time last year.

s. 22(1)(a)(ii)

s 22(1)(a)(ii)

s. 22(1)(a)(ii)

Some of the Commission's current priority projects to assist us s 22(1) include:

s. 22(1)(a)(ii)

- **communicating possible legislative and non-legislative procedural reforms** to provide the Commission with greater flexibility to respond to changes in circumstances and lodgments. This includes the 'Milford' amendment and changes that would allow the President to delegate power to issue s.368 certificates and broaden the Commission's power to dismiss applications.

s. 22(1)(a)(ii)

Thanks again for your support as the Commission navigates these once-in-a-generation challenges and opportunities.

Kind regards,

Murray

Murray Furlong
General Manager



Fair Work Commission
Australia's national workplace relations tribunal

T s. 22(1)(a)(ii)

M s. 22(1)(a)(ii)

E s. 22(1)(a)(ii) [@fwc.gov.au](https://www.fwc.gov.au)

Pronouns: (he/him)

Project name	Completed Underway Proposed	Summary of project	Expected impacts on users	Expected impact on org	Possible efficiency impact/anticipated savings	Timeline for completion of project
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s. 22(1)(a)(ii)

Progressing Milford amendment	Underway	Progressing procedural legislative amendment to reduce burden currently experienced in relation to determining jurisdictional objections	Moderate	High	Reduce workload in chambers resulting from issuing jurisdictional decisions.	TBC
Amendment to allow delegation to EL1 level for s.368 certificates	Underway	Progressing procedural legislative	Moderate	High	Reduce workload in chambers receiving and dealing with certificate reports from DRSS (duty roster) Reduce conciliator workload, removing need for certificate report preparation	TBC
GPD out of chambers – SDRO pilot	Underway	Pilot of APS6 Senior Dispute Resolution Officers dealing with GP matters via alternative methods without conducting a conference	Low	Moderate	Reduced chambers workload Greater capacity to DRSS to deal with general protections dismissal applications flexibly	Expected end of March 2026
Revamped GP website content	Completed	Reduced content – new animations and screening quiz before accessing F8 application form	Moderate	Low	More informed applicants Applicants must assess eligibility before accessing forms	Completed
UD working group	Proposed	Review case management process, application and response forms relevant to unfair dismissal jurisdiction	Moderate	Moderate	More informed applicants	TBC

s 22(1)(a)(ii)

Revamped UD website content	Proposed	Update unfair dismissal website content in line with changes made to general protections content.	Moderate	Moderate	Applicants must assess eligibility before accessing forms	TBC
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s. 22(1)(a)(ii)

From: Murray Furlong <s. 22(1)(a)(ii) @fwc.gov.au>
Sent: Wednesday, 19 November 2025 5:57 PM
To: MANNING, Gregory <s. 22(1)(a)(ii) @dewr.gov.au>
Subject: FWC - Options - 191125

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OFFICIAL

Hi Greg,
As discussed.
Thanks,
Murray



IMPACT OF DECISION IN MILFORD

Following the decision of the Full Court of the Federal Court of Australia in *Coles Supply Chain Pty Ltd v Milford* [2020] FCAFC 152 (Milford), the Commission is now required to (where a respondent raises an objection to the application), determine that objection before a conference under s.368 of the FW Act can be conducted.

Between 1 January and 29 May 2025, the Commission identified that a jurisdictional objection had been raised in over 20% of cases (equating to approximately 1300 cases in 2024-25). These cases are significantly more complex and require more resourcing at a time when the volume of applications is also increasing.

A minor legislative amendment could restore the previous, more efficient process, lowering regulatory burden and enabling the Commission to focus its resources on efficiently delivering its legislated functions and serving the public interest.

The amendment to section 365 could be drafted as follows:

365 Application for the FWC to deal with a dismissal dispute

If:

~~(a) a person has been dismissed; and~~

~~(b) a the person, or an industrial association that is entitled to represent the industrial~~

interests of the person, alleges that the person was dismissed in contravention of this Part the person, or the industrial association, may apply to the FWC for the FWC to deal with the dispute

s. 22(1)(a)(ii)

AMENDMENT TO ALLOW STAFF AT APS6 AND ABOVE TO ISSUE S.368 CERTIFICATES

The President has delegated the power to conduct s.368 conferences to specified members of staff of the Commission. Due to workload pressures, s.368 conferences are allocated to both Members of the Commission and staff conciliators.

Should a matter not resolve at conference, Members are empowered to issue s.368 certificates which an applicant can use to initiate Court proceedings. Currently, the President is not empowered to delegate the issuing of these certificates, so staff conciliators are not currently able to issue a certificate after they conduct a conference under delegation. This has resulted in a process where a staff conciliator is required to complete a report regarding each conference process where the matter remains unresolved, with a Member of the Commission reviewing each report and considering whether a certificate can be issued.

Efficiency in process would be gained if specified members of staff at the EL1 level and above could be delegated the power to issue s.368 certificates under s.625 of the FW Act.

FW ACT CHANGE TO ALLOW COMMISSION TO DISMISS APPLICATIONS IN EXPANDED CIRCUMSTANCES

From time to time, the Commission deals with individuals who engage in conduct that is vexatious or an abuse of the Commission's processes. Such individuals make up a small percentage of the people who come before the Commission, but the cost to the individuals and businesses drawn into responding to their litigation is significant, as is the public expense of dealing with their matters. The demands of such litigants upon the Commission's time and resources can also affect the Commission's ability to provide timely services to others.

The Commission presently does not have effective powers to deal with vexatious litigants.

Subject to some limited exceptions, the Commission can dismiss an application that is frivolous, vexatious or has no reasonable prospects of success, but it cannot prevent the applicant making further applications about the same matter or against the same party. The Commission can order a person who has made or responded to an application vexatiously or without cause to pay costs (or to provide security for payment of costs), but such orders are of limited utility with vexatious litigants, who are unlikely to comply and may treat costs orders as opening up a further front for litigation.

It is expected that broadening the Commission's powers to dismiss applications would result in more efficient use of resources. The Administrative Review Tribunal has an existing mechanism for dealing with vexatious litigants under s.101 of the *Administrative Review Tribunal Act 2024* (Cth) that might provide a useful starting point for consideration.

PROVIDE THE COMMISSION WITH GREATER DISCRETION TO DETERMINE MATTERS ‘ON THE PAPERS’

Section 397 of the FW Act currently provides that the Commission must conduct a conference or hold a hearing if the matter involves contested facts. Section 607(1) of the FW Act provides that the Commission can only deal with an appeal without a hearing if the Commission considers that it can be adequately determined without oral submissions and if the relevant parties consent.

Providing the Commission with a greater discretion to determine suitable matters on the papers is likely to provide for a more efficient delivery of the Commission’s services. A similar amendment has recently been proposed in relation to the Administrative Review Tribunal.

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) [@protected.fwc.gov.au](mailto:s.22(1)(a)(ii)@protected.fwc.gov.au)>
Sent: Thursday, 4 September 2025 7:52 AM
To: MANNING, Gregory <s. 22(1)(a)(ii) [@dewr.gov.au](mailto:s.22(1)(a)(ii)@dewr.gov.au)>
Cc: s. 22(1)(a)(ii) [@protected.fwc.gov.au](mailto:s.22(1)(a)(ii)@protected.fwc.gov.au)>
Subject: FW: CONFIDENTIAL | Correspondence from FWC General Manager to Minister for Employment and Workplace Relations [SEC=PROTECTED]

You don't often get email from s. 22(1)(a)(ii) [@protected.fwc.gov.au](mailto:s.22(1)(a)(ii)@protected.fwc.gov.au). [Learn why this is important](#)

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Good morning Greg,

Please see attached correspondence which was sent via the DLO to the Minister yesterday.

Please let me know if you have any questions.

Kind regards,

s. 22(1)(a)(

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s. 22(1)(a)(ii)

s 22(1)(a)(ii)



3 September 2025

The Hon. Amanda Rishworth MP
Minister for Employment and Workplace Relations
Via email: s. 22(1)(a)(ii) @dewr.gov.au

Dear Minister Rishworth,

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Additionally, measures outside my control, such as proposals for legislative amendment, are included where they have significant potential to enhance the efficient use of the Commission's resources and service delivery.

s. 22(1)(a)(ii)



s. 22(1)(a)(ii)

Possible legislative reform

The Commission has identified matters related to the operation of the *Fair Work Act 2009* that impact its ability to provide simple, fair, and flexible workplace relations for employers, employees, and others.

Jurisdictional threshold in General Protections applications involving dismissal

The most pressing matter relates to the ongoing impact of the Full Court of the Federal Court of Australia in *Coles Supply Chain Pty Ltd v Milford* [2020] FCAFC 152 (*Milford*).

Following *Milford*, the Commission is now required to (where a respondent raises an objection to the application), determine that application *before* a conference can be conducted.

An objection is now raised in over 1,300 applications each year, significantly increasing case complexity and processing time, at a time when the volume of these applications is increasing by 25% year-on-year.



A simple legislative amendment could restore the previous, more efficient process, lowering regulatory burden and enabling the Commission to focus its resources on efficiently delivering its legislated functions and serving the public interest.

The amendment to section 365 could be drafted as follows:

365 Application for the FWC to deal with a dismissal dispute

If:

~~(a) a person has been dismissed; and~~

~~(b) a~~ the person, or an industrial association that is entitled to represent the industrial interests of the person, alleges that the person was dismissed in contravention of this Part the person, or the industrial association, may apply to the FWC for the FWC to deal with the dispute

The Commission has formally briefed the Department of Employment and Workplace Relations on the consequences of the *Milford* decision and the possible legislative amendment.

s 22(1)(a)(ii)

Yours sincerely,

s. 22(1)(a)(ii)

Murray Furlong
General Manager
Fair Work Commission

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii) s. 22(1)(a)(ii); s. 22(1)(a)(ii) ; s. 22(1)(a)(ii) ; [Zoe Bright](#)
Subject: Re: NWRCC - Fair Work Commission caseload [SEC=OFFICIAL:Sensitive]
Date: Wednesday, 18 March 2026 3:42:20 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[NWRCC - Agenda Paper - Fair Work Commission Caseload - Attachment A - FWC comment.docx](#)

OFFICIAL: Sensitive

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OFFICIAL

Good afternoon s. 22(1)(a)(ii),

My apologies for the delay in getting this document back to you.

Please see attached document with some tracked changes and comments from staff in item 2. Items 1 and 3 we have no additional comments.

s 22(1)(a)(ii)

s. 22(1)(a)(ii), President Hatcher gave a short update s. 22(1)(a)(ii) general protections process changes. s. 22(1)(a)(ii)

egarding

Please let me know if you have any further questions arising from the document or the above information.

Kind regards,

s. 22(1)(

s. 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: s. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)

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s. 22(1)(a)(ii)

Options to address resourcing pressures on the Fair Work Commission

Options for agreement

Options for reforms	Background	Benefits
1. Additional powers to deal with vexatious applications Under this option, the Commission would be provided additional powers to dismiss applications in line with Administrative Review Tribunal mechanisms for dealing with vexatious litigants, including: • Broadening the grounds on which the Commission may dismiss an application to include that the application: ○ is frivolous, vexatious, misconceived or lacking in substance ○ has no reasonable prospects of success, or ○ is otherwise an abuse of process of the Commission. • Enabling a Full Bench of the Commission to make an order excluding a vexatious litigant from making further applications to the Commission of a specified kind, unless permission is granted by a Presidential Member. • A new provision would make clear that a decision by a Presidential Member to refuse to permit a further application could not be appealed to a Full Bench of	The Commission does not presently have as much power as some other tribunals (such as the Administrative Review Tribunal) to deal with vexatious litigants. Subject to some limited exceptions, the Commission can dismiss an application that is frivolous, vexatious or has no reasonable prospects of success, but it cannot prevent the applicant making further applications about the same matter or against the same party. The Commission can order a person who has made or responded to an application vexatiously or without cause to pay costs (or to provide security for payment of costs), but such orders can be of limited utility with vexatious litigants, who are unlikely to comply and may treat costs orders as opening up a further front for litigation.	• Allows for a more effective allocation of Commission resources to address more meritorious claims • Reduces costs for respondents in responding to repeated allegations of wrongdoing. • Further disincentivises vexatious claims, noting the Commission already has some limited powers in this regard. • Would align the powers of the Commission with those of the Administrative Review Tribunal (see <i>Administrative Review Tribunal Act 2024</i>, s 101).

Options for reforms	Background	Benefits
the Commission but would be subject to judicial review by the Courts.		
2. Additional powers to delegate certification that all reasonable attempts to settle a dispute have been unsuccessful This option would amend the Fair Work Regulations to allow the President to delegate to specified staff (APS6 and above)) the power to issue s 368 certificates.	Section 625 of the Fair Work Act allows the President to delegate certain powers of the Commission to the General Manager or staff of the Commission. The President has delegated the power to conduct s 368 conferences for general protections dismissal disputes to specified staff members of the Commission. Due to workload pressures these conferences are allocated to both Commission Members and specified staff. Should a matter not resolve at conference, Commission Members are empowered to issue a certificate, which an applicant can use to initiate Court proceedings. Currently, the President cannot delegate the issuing of s 368 certificates to Commission staff, so staff cannot issue a certificate after dealing with a general protections dismissal matter. This means staff must provide Commission Members with a report for each general protections dismissal matter they have dealt with where the matter remains unresolved to consider if a certificate can be issued.	• The Commission has stated that efficiency would be gained if specified EL1 and above staff could be delegated the power to issue s 368 certificates for general protections dismissal disputes. • Applicants would be able to proceed to court quicker if desired.
3. Powers to determine matters on the papers This option would provide the Commission greater discretion to determine matters 'on the papers', without a formal hearing, where: - it appears to the Commission that a matter can be adequately determined without a hearing; - the Commission considers that it would be reasonable in the circumstances to do so;	Section 397 of the FW Act currently provides that the Commission must conduct a conference or hold a hearing if an unfair dismissal matter involves contested facts. Section 607(1) of the FW Act provides that the Commission can only deal with an appeal without a hearing if the Commission considers that it can be adequately determined without oral submissions and if the relevant parties' consent. The Commission has requested that it be given greater discretion under these sections to determine suitable matters on the papers.	• Providing the Commission with a greater discretion to determine suitable matters on the papers may provide for more efficient delivery of the Commission's services, allowing it to redirect resources to more complex matters. • Would align the powers of the Commission with the powers that the Administrative Review Tribunal will have under s 106 upon

Options for reforms	Background	Benefits
- the Commission has provided parties with a reasonable opportunity to put submissions about whether the matter should be heard on the papers; - the Commission has taken into account any views received.		commencement of the <i>Administrative Review Tribunal and Other Legislation Amendment Act 2026</i> .

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Cc: [HARB,Diab](#); s. 22(1)(a)(ii) [COSTELLOE,Sarah](#)
Subject: Re: For input: Judicial decision making in fair work [SEC=PROTECTED, CAVEAT=SH:CABINET]
Date: Tuesday, 28 April 2026 4:50:04 PM
Attachments: [image001.jpg](#)

PROTECTED//CABINET

PROTECTED//CABINET

Hi s. 22(1)(a)(ii),

Thanks for your patience with me sending through the below information.

The below is staff comment on the documents received by me on 15 April 2026. If you have any questions please let me know.

s 47C(1)

s 47C(1)

Kind regards,
s. 22(1)

s. 22(1)(a)(ii) (she/her)
Director, Government Relations
Legal, Performance and Engagement Branch

Fair Work Commission

T: s. 22(1)(a)(ii)
E: s. 22(1)(a)(ii)@fwc.gov.au / s. 22(1)(a)(ii)@protected.fwc.gov.au

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s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

From: Zoe Bright <s. 22(1)(a)(ii)@fwc.gov.au>
Sent: Thursday, 20 November 2025 10:12 AM
To: MANNING, Gregory <s. 22(1)(a)(ii) @dewr.gov.au>
Cc: Murray Furlong <s. 22(1)(a)(ii) @fwc.gov.au>
Subject: GM correspondence 21 November 2023

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OFFICIAL

Good morning Greg,

Murray has asked me to send you a copy of his letter to Martin Hehir of 21 November 2023 and the attachment to the letter. The attachment raises the impact of the *Milford* decision and a possible legislative change.

Kind regards,

Zoë Bright (she/her)

Executive Director, Legal Performance and Engagement

Diversity and Inclusion Committee member

Women's Network member



T: s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii)@fwc.gov.au

11 Exhibition Street, Melbourne, 3000



At the Fair Work Commission we respect and celebrate the diversity of our communities and we are committed to creating a safe and welcoming space for all.

We acknowledge that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to Country and pay our respects to their Elders past and present. This email was sent from Wurundjeri Woi Wurrung Country.

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21 November 2023

Mr Martin Hehir PSM
Deputy Secretary, Workplace Relations
Department of Employment and Workplace Relations

By email: s. 22(1)(a)(ii) [@dewr.gov.au](mailto:s.22(1)(a)(ii)@dewr.gov.au)

Dear Martin,

I write to provide to the Department of Employment and Workplace Relations with three proposals for legislative amendment.

Please see attached.

The legislative amendments discussed in the attached document would assist the Commission to discharge its functions in a way which is quick, informal and avoids unnecessary technicalities, as required by the *Fair Work Act 2009*.

I would welcome the opportunity to discuss these matters further with you.

Yours sincerely,

s. 22(1)(a)(ii)

Murray Furlong
General Manager
Fair Work Commission

1. Remove the requirement for the Commission to deal with 'jurisdictional objections' in relation to conciliation of GP dismissal matters

Issue

In 2022/23 the Fair Work Commission (**Commission**) dealt with 4,964 general protections applications made under s 365 of the *Fair Work Act* (**Act**) involving dismissal (**GP dismissal matters**) making up 16% of total applications dealt with by the Commission during that period.

The role originally envisaged by the Act for the Commission in respect of dismissals alleged to be in contravention of the general protections provisions in Part 3-1 of the Act was to undertake a dispute resolution process pursuant to s 368 prior to matters going to the Courts for determination. It appears not to have been envisaged that the Commission would be required to engage in any determination of the merits of such matters. This is reflected in s 587(2), which prohibits the Commission from dismissing an application made under s 365 on the ground that the application is frivolous or vexatious or has no reasonable prospects of success.

Prior to the decision of the Full Court of the Federal Court in [Coles Supply Chain Pty Ltd v Milford \[2020\] FCAFC 152](#) (*Milford*), the Commission dealt with GP dismissal matters on the basis that it was not part of the Commission's function in dealing with such matters to determine whether the applicant had been 'dismissed' within the meaning of that term in s 386 of the Act, since it was considered that it was the role of the Courts to determine this matter in respect of general protections claims (see [Hewitt v Topero Nominees Pty Ltd \[2013\] FWCFB 6321](#)).

The case management process utilised by the Commission to conduct s 368 conferences, prior to the decision in *Milford*, was quick, informal and resulted in the agreed resolution of around 70% of GP dismissal matters. This process also facilitated efficient and cost-effective use of Commission resources, as conciliation can be conducted by staff conciliators acting under delegation.

The Full Court in *Milford* found that the existence of a 'dismissal' is a jurisdictional prerequisite to a GP dismissal matter being brought to the Commission so that, if this is in dispute, this must be determined by the Commission before it can conduct a conference pursuant to s 368. The Full Court's reasoning primarily relied upon the fact that the word 'alleged' is used in s 365(b) in respect of the claimed contravention of Part 3-1, but not in s 365(a) in respect of the dismissal. The High Court refused leave to appeal from this decision.

It may be noted that the Explanatory Memorandum for the *Fair Work Bill 2008* stated (at [1478]) that 'Clause 365 provides that a person who alleges that they have been dismissed in contravention of Part 3-1, may apply to FWA for a conference to attempt to settle the dispute' (underlining added). This appears to reflect the original intention.

In May this year, the Full Bench in [Lipa Pharmaceuticals v Jarouche \[2023\] FWCFB 101](#) found that, as a consequence of *Milford*, where the respondent raises a jurisdictional objection that the applicant was not in fact dismissed within the meaning of s 367 (because, in respect of alleged constructive dismissal, the employee was not forced to resign, or because the applicant was not at law an employee) the Commission must determine the objection before a conciliation conference can be conducted. This is required by *Milford* even though the

Commission cannot make a binding determination of the jurisdictional objection and, if the matter proceeds to a Court, it will be the Court's function to make such a determination.

As required by *Milford*, in June 2023 the Commission's case management process was changed so that where a respondent raises a jurisdictional objection, the objection is first determined by Member of the Commission and the matter proceeds to conciliation only if the objection is dismissed. Jurisdictional objections are raised in around 25% of cases.

The result is that a far greater proportion of GP dismissal matters than previously must first be dealt with by a Member in a formal arbitrated Commission proceeding. This often requires the parties to commit significant time and resources to a contested proceeding, and requires the Commission to issue a decision, rather than the process being confined to quick and informal conciliation. This has the effect of significantly delaying the Commission's capacity to process these matters and unnecessarily diverts a significant amount of Member resources. Only about 15% of such jurisdictional objections are upheld by the Commission.

Possible legislative change

There may be significant benefit for both parties to a GP dismissal matter, if s 365 of the Act was amended to clarify that the Commission is empowered to deal with a dispute if it is *alleged* that a person has been dismissed in contravention of Part 3-1. A consequential amendment would be required to s 366 (and perhaps also to s 372).

An amendment of this type would allow the Commission to utilise quick and informal mediation and conciliation powers upon receipt of an application. Should a Member at conference form a view that it is unlikely that the alleged dismissal occurred, that Member is empowered to advise the parties that arbitration under s 369 or a general protections court application would not have reasonable prospects of success (see s.368(3)).

Such an amendment would facilitate the Commission resolving such matters in a manner that is quick, informal and avoids unnecessary technicalities, as required by s 577 of the Act.

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
To: [JONES, Henry](#)
Cc: s. 22(1)(a)(ii); [COSTELLOE, Sarah](#); s. 22(1)(a)(ii)@fwc.gov.au; s. 22(1)(a)(ii)@fwc.gov.au
Subject: Proposal re delegating function [SEC=OFFICIAL:Sensitive]
Date: Tuesday, 5 May 2026 5:46:19 PM

OFFICIAL: Sensitive

OFFICIAL:Sensitive

Good afternoon Henry,

My apologies for the delay in coming back to you after our discussion this morning.
s 47C(1)

Please let me know if you would like to discuss in the morning.

Kind regards,

s. 22(1)(a)(

s. 22(1)(a)(ii) (she/her)
Director, Government Relations

Legal, Performance and Engagement Branch

Fair Work Commission

T: s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii)@fwc.gov.au / s. 22(1)(a)(ii)@protected.fwc.gov.au

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From: s. 22(1)(a)(ii) 1
To: [COSTELLO, Sarah](#)
Cc: [HALLAS, Emma](#); [JONES, Henry](#); s 22(1)(a)(ii); s 22(1)(a)(ii) ; s 22(1)(a)(ii) ; s 22(1)(a)(ii); s 22(1)(a)(ii)
Subject: Re: FOR FWC FEEDBACK by COB 16 April: Draft amendments [SEC=OFFICIAL: Sensitive, ACCESS=Legal-Privilege]
Date: Friday, 17 April 2026 4:38:59 PM
Attachments: [image001.jpg](#)
[Draft legislation - 17 April 2026.pdf](#)

~~OFFICIAL: Sensitive//Legal-Privilege~~

~~OFFICIAL: Sensitive//Legal-Privilege~~

Good afternoon Sarah,

My apologies for the delay in coming back to you.

s. 22(1)(a)(ii)

Please see attached comments I have collated in relation to the drafts provided. These comments relate to technical and operational matters identified by Commission staff.

If you have any queries, please give me a call.

Kind regards,

s. 22(1)

s. 22(1)(a)(ii) (she/her)

Director, Government Relations
Legal, Performance and Engagement Branch

Fair Work Commission

T: s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii)@fwc.gov.au / s. 22(1)(a)(ii)@protected.fwc.gov.au

~~OFFICIAL: Sensitive//Legal-Privilege~~

s. 22(1)(a)(ii)

S 47C(1)

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii); [Zoe Bright](#); s. 22(1)(a)(ii); [JONES, Henry](#)
Subject: Re: Jurisdictional objections time limit provision [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Wednesday, 13 May 2026 5:08:39 PM
Attachments: [Outlook-22tzhux3.jpg](#)
[T26VS105.v05.docx](#)

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OFFICIAL

Good afternoon s. 22(1)(a)(i)

Thank you for the opportunity to consider the document (attached) and information provided.

s 47C(1)

Please let me know if you would like to discuss the above.

Kind regards,

s. 22(1)

s. 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: s. 22(1)(a)(ii)

s. 22(1)(a)(ii) @fwc.gov.au

~~OFFICIAL: Sensitive//Legal Privilege~~

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii) ; [Zoe Bright](#)
Cc: s 22(1)(a)(ii); s 22(1)(a)(ii) ; s 22(1)(a)(ii) ; s 22(1)(a)(ii)
Subject: Re: Follow up - FWC views on jurisdictional objections and certificates amendments [SEC=OFFICIAL]
Date: Thursday, 19 March 2026 5:02:22 PM
Attachments: [image001.jpg](#)

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OFFICIAL

Good afternoon,

Further to a call from s. 22(1)(a)(ii) this afternoon, I confirm the President has not currently delegated conference powers for unlawful termination matters (applications under s.773).

Kind regards,

s. 22(1)

s. 22(1)(a)(ii) (she/her)
 Director
 Government Relations

Fair Work Commission
 Tel: s. 22(1)(a)(ii)
 s. 22(1)(a)(ii) [@fwc.gov.au](#)

From: s. 22(1)(a)(ii)
Sent: Thursday, March 19, 2026 3:19 PM
To: s. 22(1)(a)(ii) ; Zoe Bright
Cc: s 22(1)(a)(ii) ; s 22(1)(a)(ii) s 22(1)(a)(ii) ; s 22(1)(a)(ii)
Subject: Re: Follow up - FWC views on jurisdictional objections and certificates amendments [SEC=OFFICIAL]

OFFICIAL

Good afternoon s. 22(1)(a)(ii),

Thank you for your patience with us. Please see our responses to DEWR questions below. If you have any questions arising, please let Zoe or I know.

s 47C(1)

s 47C(1)

Kind regards,
s. 22(1)

s. 22(1)(a)(ii) (she/her)
Director
Government Relations

Fair Work Commission
Tel: s. 22(1)(a)(ii)
s. 22(1)(a)(ii) [@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Cc: [Zoe Bright](#); s. 22(1)(a)(ii)
Subject: RE: For Policy Review - Autumn 2026 Leg Bids - Jurisdictional objections [SEC=OFFICIAL:Sensitive]
Date: Thursday, 28 August 2025 4:13:57 PM
Attachments: [image001.jpg](#)

OFFICIAL: Sensitive

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OFFICIAL

Good afternoon s. 22(1)(a)(ii),

My apologies for the delay in getting back to you regarding this query.

We don't see the case of *Taylor v Department of Justice and Community Safety* causing issues in the same way.

With unfair dismissal matters the Commission has a determinative function. While *Taylor v Department of Justice and Community Safety* discusses the order of determining different issues in an unfair dismissal matter, it has always been required that the Commission turn its mind to whether there was in fact a dismissal when dealing with unfair dismissal matters.

Please let me know if you have any further queries.

Kind regards,

s. 22(1)(i)

s. 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: s. 22(1)(a)(ii)

s. 22(1)(a)(ii) @fwc.gov.au

OFFICIAL: Sensitive

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) @fwc.gov.au

Sent: Monday, 18 August 2025 4:17 PM

To: s. 22(1)(a)(ii) @dewr.gov.au

Cc: Zoe Bright <s. 22(1)(a)(ii) @fwc.gov.au>

Subject: RE: For Policy Review - Autumn 2026 Leg Bids - Jurisdictional objections [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

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and know the content is safe.

OFFICIAL

Hi s. 22(1)(a)(ii)

Thanks so much for your email and for on-sending with adjustments.

s. 22(1)(a)(ii)

I'll do some consulting internally with a view to coming back to you in the next couple of days.

Kind regards,

s. 22(1)(i)

s 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: **s. 22(1)(a)(ii)**

s. 22(1)(a)(ii) [@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)

OFFICIAL: Sensitive

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Cc: [Zoe Bright](#)
Subject: RE: For Policy Review - Autumn 2026 Leg Bids - Jurisdictional objections [SEC=OFFICIAL:Sensitive]
Date: Thursday, 28 August 2025 5:27:15 PM
Attachments: [image001.jpg](#)
[FINAL - Milford resourcing note and proposal - July 2025.pdf](#)

OFFICIAL: Sensitive

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OFFICIAL

Hi s. 22(1)(a)(ii),

I have attached the document sent here for your information.

I note this document is provided to you for the purpose of reviewing the issue and should not be further distributed outside your team please.

Kind regards,

s. 22(1)(i)

s. 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: s. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)

OFFICIAL: Sensitive

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) [@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)
Sent: Thursday, 28 August 2025 4:39 PM
To: s. 22(1)(a)(ii) [@dewr.gov.au](mailto:s.22(1)(a)(ii)@dewr.gov.au)
Cc: Zoe Bright <s. 22(1)(a)(ii)@fwc.gov.au>; s. 22(1)(a)(ii) [@dewr.gov.au](mailto:s.22(1)(a)(ii)@dewr.gov.au)
Subject: RE: For Policy Review - Autumn 2026 Leg Bids - Jurisdictional objections [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

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OFFICIAL

Hi s. 22(1)(a)(ii),

The Commission continues to experience significant resourcing impacts as a result of the *Coles v Milford* decision as outlined in our brief to the Department earlier this year.

I note that since that brief was compiled we have continued to see general protections – dismissal application numbers grow over June and July this year.

We continue to press the case for an amendment as proposed.

Kind regards,

s. 22(1)(i)

s. 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: s. 22(1)(a)(ii)

s. 22(1)(a)(ii)@fwc.gov.au

OFFICIAL: Sensitive

s. 22(1)(a)(ii)

From: S. 22(1)(a)(ii) @fwc.gov.au>
Sent: Thursday, 28 August 2025 4:13 PM
To: S. 22(1)(a)(ii) @dewr.gov.au>
Cc: Zoe Bright <s. 22(1)(a)(ii)@fwc.gov.au>; s. 22(1)(a)(ii) @dewr.gov.au>
Subject: RE: For Policy Review - Autumn 2026 Leg Bids - Jurisdictional objections [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

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s. 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: s. 22(1)(a)(ii)

s. 22(1)(a)(ii)@fwc.gov.au

OFFICIAL: Sensitive

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) <[s.22\(1\)\(a\)\(ii\)@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)>
Sent: Monday, 18 August 2025 4:17 PM
To: s. 22(1)(a)(ii) <[s.22\(1\)\(a\)\(ii\)@dewr.gov.au](mailto:s.22(1)(a)(ii)@dewr.gov.au)>
Cc: Zoe Bright <s.22(1)(a)(ii)@fwc.gov.au>
Subject: RE: For Policy Review - Autumn 2026 Leg Bids - Jurisdictional objections [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

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OFFICIAL

Hi s. 22(1)(a)(ii),

Thanks so much for your email and for on-sending with adjustments.

s. 22(1)(a)(ii)

I'll do some consulting internally with a view to coming back to you in the next couple of days.

Kind regards,

s. 22(1)(i)

s. 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: s. 22(1)(a)(ii)

s. 22(1)(a)(ii) <[s.22\(1\)\(a\)\(ii\)@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)>

OFFICIAL: Sensitive

s. 22(1)(a)(ii)

General protections applications involving dismissal

Relevant legislation and application types

[1] Part 3-1–General Protections of the *Fair Work Act 2009* (Cth) (FW Act) provides for a range of workplace protections. The principal categories of protections are:

- protections relating to workplace rights (which can be broadly described as employment entitlements and the freedom to exercise and enforce those entitlements)
- engaging in industrial activities (which encompasses the freedom to be or not be a member or officer of an industrial association and to participate in lawful activities, including those of an industrial association)
- other protections including protection from unlawful discrimination, and
- sham arrangements.

[2] Certain persons, including employers, principals, employees and industrial associations, are prohibited from taking adverse action against certain other persons because the other person has, or exercises, a workplace right, or engages in industrial activity. Adverse action includes the dismissal of an employee but also includes a range of other action, such as prejudicing an employee or independent contractor and organising industrial action against another person. Coercion and misrepresentation in relation to workplace rights and industrial activities are also prohibited.

[3] All of the general protections prohibitions are civil remedy provisions. They may be enforced under Part 4-1 of the FW Act in the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2).

[4] The FW Act confers dispute resolution functions on the Fair Work Commission in relation to general protections functions. There are two types of applications relating to the general protections that can be lodged in the Commission:

- **General protections applications involving dismissal** – if a person has been dismissed and alleges that their dismissal was in contravention of the general protections provisions, they can make an application to the Commission under section 365 of the FW Act to deal with the dispute. A general protections application involving dismissal must be made within 21 days of the dismissal taking effect. When such an application is made, the Commission exercises dispute resolution functions under section 368.
- **General protections applications not involving dismissal** – if a person has not been dismissed but alleges that there has been some other contravention of the general protections provisions, they may make an application to the Commission to deal with the dispute under section 372 of the FW Act. The Commission must conduct a conference in relation to the dispute under s 374 if the parties agree to participate.

[5] This note deals with **general protections applications involving dismissal**.

Decision of the Full Federal Court in Milford

[6] A Full Court of the Federal Court in *Coles Supply Chain Pty Ltd v Milford* [2020] FCAFC 152 (*Milford*) determined that if (in response to a general protections application involving dismissal made under section 365) the respondent asserts there was no dismissal (because the applicant resigned voluntarily or was not, at law, an employee) then that gives rise to a dispute under the section going to the entitlement of the applicant to make the application. That antecedent dispute must be determined by the Commission before the Commission can exercise any dispute resolution powers under section 368. Any determination which the Commission makes is for the purpose of satisfying itself that it has jurisdiction to deal with the matter, but its determination is not binding on a court in any subsequent enforcement proceedings.

[7] Prior to *Milford*, the Commission dealt with GP dismissal matters on the basis that:

- it was not part of the Commission's function to determine whether the applicant had been dismissed for the purposes of s 365 of the Act, and
- it was the role of the Courts to determine that issue (see *Hewitt v Topero Nominees Pty Ltd* [2013] FWCFB 6321).

[8] The case management process utilised by the Commission to conduct dispute resolution conferences under section 368 prior to the decision in *Milford*:

- was quick and informal,
- facilitated efficient and cost-effective use of Commission resources (as conciliations could be conducted by staff conciliators acting under delegation), and
- resulted in the agreed resolution of around 70% of GP dismissal matters.

[9] Following the decision in *Milford*, in June 2023 the Commission's case management process was changed so that when a respondent raises a jurisdictional objection:

- the objection must first be determined by Member of the Commission, and
- the matter proceeds to conciliation only if the objection is dismissed.

[10] This has increased the case complexity and the time taken for the Commission to deal with general protections dismissal disputes.

[11] Between 1 January and 29 May 2025, a jurisdictional objection was raised in **over 20% of general protections applications involving dismissal** (532 applications where a jurisdictional objection was lodged out of 2545 total applications lodged).

[12] General Manager Murray Furlong wrote to the Deputy Secretary of the Department of Employment and Workplace Relations in November 2023 regarding the resourcing impacts of the *Milford* decision, outlining a proposal for change. That correspondence can be found at **Attachment A**.

Resourcing and cost impact of Milford

[13] The resources required to deal with general protections dismissal disputes, and the associated cost, have increased as a result of the decision in *Milford*.

[14] Conservatively, each general protections application involving dismissal dealt with in the normal way by conducting a conference requires approximately 4 hours resourcing as follows:

- 15 minutes of processing from an APS4 staff member on lodgement of the application
- 40 minutes of processing from a APS5 case manager
- 3 hours preparing for, conducting and finalising a conference by an EL2 conciliator or Member.

[15] The total estimated cost of the above case management and staff conference, based on the current salary rate for an EL2 conciliator, is \$374 per application.

[16] However, where a jurisdictional objection has been raised, the *additional* resources required is approximately 21 hours of resourcing as follows:

- 15 minutes of processing from an APS 4 staff member
- 8 hours of programming and administrative work for an APS 5 Associate (reviewing file, listing for Mention/Directions, direct phone calls/correspondence with parties, listing hearing, attending and assisting hearing, processing/reviewing/summarising submissions and evidence, reviewing and formatting draft decision, publishing decision and notifying parties)
- 13 hours for a Member to determine matter (review application and response, hold Mention/Directions hearing, conduct evidence hearing (multiple days), consider materials and prepare and finalise written decision).

[17] The total estimated cost of the above additional case management process, based on the current salary rate (where the Member is at Commissioner level) is \$3,551 per application.

[18] Between 1 January 2025 and 29 May 2025, as a result of *Milford*, the Commission was required to deal with **532 applications** involving a jurisdictional objection. Extrapolating our current case numbers across a full year (approximately **1,270 applications**), the annualised salary costs for these applications would be, conservatively, about \$4.5 million.

[19] This is a conservative estimate as the above cost analysis relates to a jurisdictional matter requiring a half day hearing. Some jurisdictional objections require multi-day hearings and the writing of complex decisions, and decisions involving jurisdictional objections are also often appealed, requiring a Full Bench of three Members to review the original decision.

Proposed legislative change

[20] A simple legislative change could be made to enable the Commission to return to the manner in which it dealt with general protections applications involving dismissal before the

Milford decision. This could provide significant benefits in reducing both the time and cost to the parties and the Commission resources consumed by these applications, and allow the Commission to expend more resources on matters of greater importance to the public interest.

[21] This could be done by amending s 365 of the Act to the effect that if a person, or an industrial association that is entitled to represent the industrial interests of the person, alleges that the person was dismissed in contravention of Part 3-1 of the Act, then the Commission is empowered to deal with the dispute under s 368. A consequential amendment to s 366 would be required. A consequential amendment to s 372 might also be required.

[22] The proposed change to s 365 could be drafted as follows:

365 Application for the FWC to deal with a dismissal dispute

If:

~~(a) a person has been dismissed; and~~

~~(b)~~ **a** the person, or an industrial association that is entitled to represent the industrial interests of the person, alleges that the person was dismissed in contravention of this Part the person, or the industrial association, may apply to the FWC for the FWC to deal with the dispute.

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii); [HARB.Diab](#); [COSTELLOE,Sarah](#)
Cc: s. 22(1)(a)(ii) [Zoe Bright](#); s. 22(1)(a)(ii)
Subject: For information | GM statement - Changes to processes, systems and information - to be published today
Date: Friday, 29 May 2026 11:40:50 AM
Attachments: [Outlook-A close-up.png](#)
[Outlook-A close up.png](#)
[GM-statement-change-at-the-Commission.pdf](#)

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OFFICIAL

Good morning DLO, Diab and Sarah,

Please see attached statement which the General Manager, Murray Furlong, will be publishing later today.

If you have any questions in relation to the statement, please let me know.

Kind regards,

s. 22(1)(a)(

s. 22(1)(a)(ii) (she/her)

Director, Government Relations

Legal, Performance and Engagement Branch

PID Authorised Officer



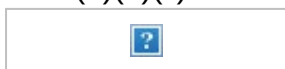
T s. 22(1)(a)(ii)

E s. 22(1)(a)(ii) [@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

s. 22(1)(a)(ii)



At the Fair Work Commission we respect and celebrate the diversity of our communities and we are committed to creating a safe and welcoming space for all.

We acknowledge that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to Country and pay our respects to their Elders past and present. This email was sent from Wurundjeri Woi Wurrung country.

Important: This message may contain private or confidential information. If you think this email was sent to you by mistake, please immediately notify the sender and delete all copies of the email from your system. Please refer to our [privacy policy](#) for more information on how we collect and handle personal information.



General Manager statement

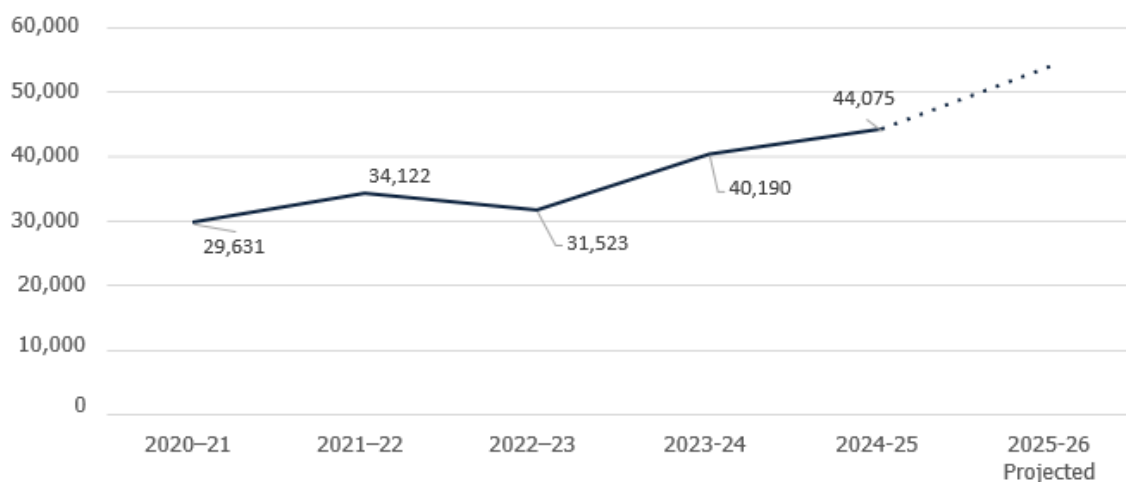
Changes to processes, systems and information

Melbourne, 29 May 2026

- [1] The Fair Work Commission's President, Justice Hatcher and I have been closely monitoring the significant increase in the Commission's workload over recent years. This increase has coincided with a number of other changes, including a significant increase in the number of persons representing themselves in Commission cases, budget constraints and resourcing challenges.
- [2] Additionally, the proliferation of generative AI (GenAI) assistance tools has had a significant impact on the Commission's work as detailed in [Justice Hatcher's November 2025 statement about reforms to general protections case management processes \(PDF 284 KB\)](#).
- [3] These impacts, taken together, are having a direct effect on the Commission's ability to provide timely, efficient and effective dispute resolution services to the community. In response, the Commission must review the way that we work to ensure that we can operate sustainably in the years ahead.
- [4] The Commission is committed to managing change in an open and transparent way and this statement outlines the changes we are proposing for the year ahead. To assist the community to keep up to date about our changes, we have created a [Change at the Commission web page](#) that we will update throughout the rest of the year.

Workload challenges

- [5] The Commission's workload challenges are documented in a number of public statements from Justice Hatcher. His Honour recently noted in his [Statement about the Commission's draft AI guidance note \(PDF 231 KB\)](#) that, by the end of financial year 2025–26, it is likely that the Commission's total workload will have increased by over 70% in the space of 3 years. Our most recent data shows that at the end of April we had received 44,039 lodgments, just 36 matters shy of the total lodgments received in the whole of the 2024–25 financial year period (44,075). This was the previous highest number of applications received by the Commission.

Figure 1: Total lodgments by year since 2021–22

- [6] These numbers clearly show a significant increase in the number of people seeking the assistance of the Commission. However, our workload is not adequately reflected by referring to application volume alone. Other resourcing pressures we are currently experiencing include:
- The significant number of major cases the Commission is undertaking and has programmed, including gender-based undervaluation matters, reviews of award provisions relating to working from home and part-time employment, and the setting of regulated worker minimum standards and contractual chain orders.
 - Approximately 1,400 jurisdictional matters determined between 1 July 2023 and 31 December 2025 resulting from the decision of the Full Court of the Federal Court in *Coles Supply Chain Pty Ltd v Milford* [2020] FCAFC 152 in relation to general protections claims.
 - Over 451 PABO conferences in the 2025–26 financial year to 30 April.
- [7] In addition, the Commission's operations associated with regulating federally registered organisations (union and employer representative groups) are also at unprecedented levels, with several high-profile oversight, compliance and enforcement matters progressing.
- [8] The increased workload is placing strain on every element of the Commission's operations. The unwavering commitment and tireless efforts of Members and staff across the organisation are recognised in managing the ever-increasing workload. However, applications continue to rise without any signs of slowing, further increasing pressure on existing and future resources.
- [9] This is unsustainable and we cannot continue to operate in the same way.

Changing user profile

[10] In recent years, the Commission has seen a major shift in both the type of work it does and the people who use its services. There has been a move from collective matters to individual rights-based dispute applications to the Commission over the past 10 years and this has continued to accelerate over the past 36 months. In addition to the shift from collective to individual disputes, the proportion of applicants coming to the Commission without a legal or other representative has also shifted.

[11] The graphs below show this change in user profile in the general protections dismissal and unfair dismissal jurisdictions.

Figure 2: Increase in self-represented applicants in general protections dismissal (s.365) cases.

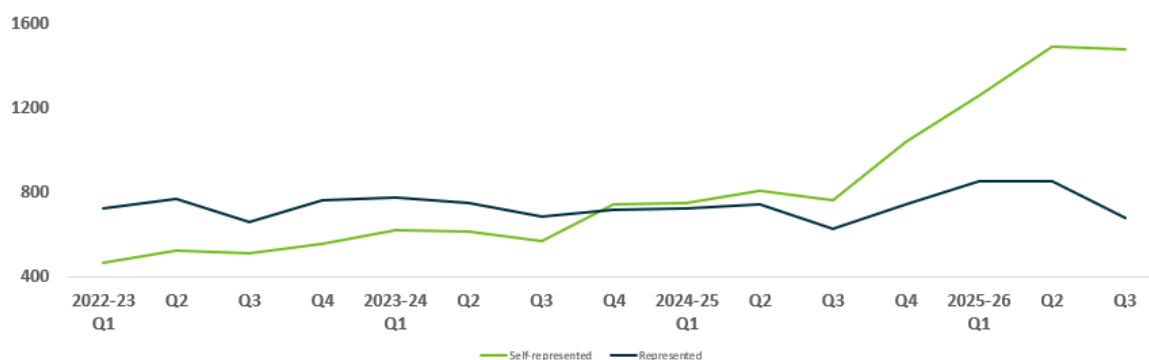
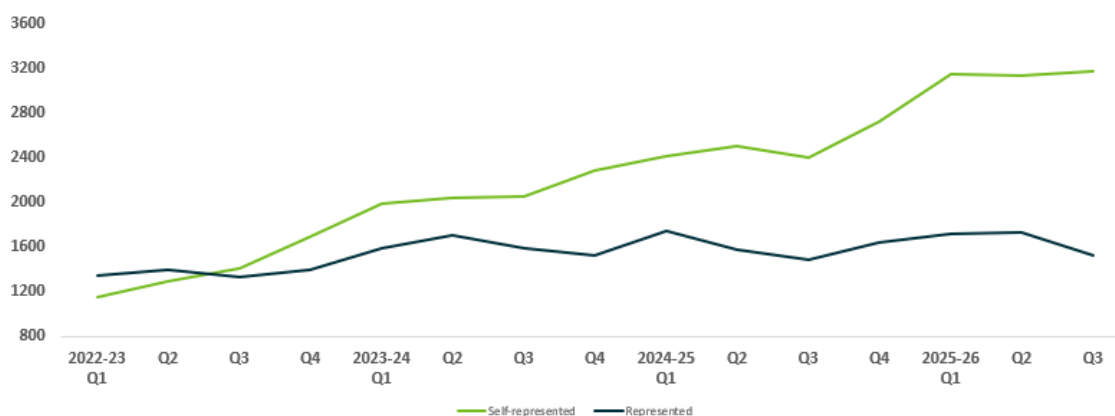


Figure 3: Increase in self-represented applicants in unfair dismissal (s.394) cases.



[12] These users need extra help to navigate the Commission's processes and require clear, plain language information and targeted education resources delivered in the right format and at the right time.

- [13] More users are coming to the Commission with little or no workplace relations experience, often informed by content generated by AI. To help the Commission better understand and respond to the changing user profile we have initiated external research about the use of AI in general protections and unfair dismissal matters. We are still finalising the research, however early results indicate that a significant proportion of applicants are using AI in their applications to the Commission. The Commission will share the research once it is finalised, and we anticipate undertaking further research to assist with responsible use of GenAI in tribunal proceedings.

How we are responding

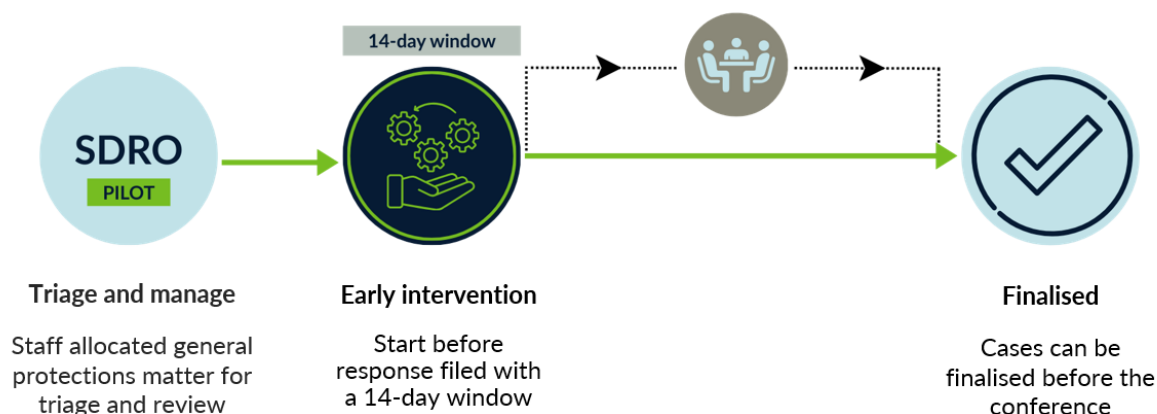
Managing cases

- [14] The Commission is reviewing how it manages each of the major types of applications that come to us. We started this review with general protections involving dismissal cases as this was one of the fastest growing areas of work for the Commission.
- [15] The Commission has now commenced an internal review of the general protections not involving dismissal jurisdiction and a targeted review of our sexual harassment jurisdiction during which we will consult closely with the Respect@Work Council. A review of the unfair dismissal jurisdiction is to follow in the second half of 2026. These reviews are likely to result in significant changes to the Commission's processes and forms, similar to those made as part of the review of general protections involving dismissal. We will communicate those changes through our subscription and stakeholder information channels as well as through individual matter correspondence and materials.
- [16] Alongside these more structural reviews, we have commenced several transformational initiatives at the staff level to improve case management processes and help to address the challenges the Commission is facing.

Early intervention in general protections disputes

- [17] The Commission is trialling a new alternative dispute resolution (ADR) process through its Early Dispute Resolution (EDR) pilot. Under the pilot, a dedicated team of Senior Dispute Resolution Officers (SDROs) led by an experienced staff conciliator make early contact with parties in suitable matters to provide information about the general protections jurisdiction and attempt to informally resolve the dispute.
- [18] Staff use a mix of ADR options in the pilot, with conferences held only where needed. The aim is to contact parties within 14 days often before a response is filed.

Figure 4: Diagram of the SDRO pilot process.



- [19] Early results of the EDR pilot indicate that many cases can be finalised quickly through early intervention, lowering the burden on business of responding to applications with no prospect of success where appropriate. The pilot has been extended through to September 2026, and we will continue trialling different approaches during this time.

Staff conference model pilot

- [20] The Commission's specialist staff conciliators are also trialling a new conference model in general protections dismissal disputes. This model follows reforms introduced for Commission Members as part of broader changes to case management in this jurisdiction, which Justice Hatcher outlined in his [November 2025 statement on these process reforms \[PDF 284 KB\]](#).
- [21] In the new model, staff conciliators focus the discussion on finding a resolution to the dispute. This recognises that the Commission does not perform a determinative function in this jurisdiction. The pilot ran for 8 weeks and we are now evaluating it. Early indications are that the process can present an efficient alternative to the current conference model.
- [22] Following evaluation, the Commission will determine if the new model should be implemented on a permanent basis.

Technology

- [23] As part of the comprehensive reform program, the Commission is undergoing a technology uplift and has, where appropriate, brought forward planned development work that will help address the challenges currently facing the Commission.
- [24] The changes to technology are both in support of and driving some of our case management changes. We will make these changes progressively and we will aim to find efficiency benefits, reduce expenditure in forward years and in some cases utilise GenAI capabilities to reduce the need for manual processing. While we will endeavour to



consult regarding upcoming changes, stakeholder feedback may not always be able to be accommodated.

MyFWC online portal

- [25] The MyFWC online portal was released in 2025 and replaced the Commission's previous online lodgment method for unfair dismissal (Form F2) and general protections dismissal (Form F8) applications. This was our first step in developing an end-to-end case management system for internal and external users.
- [26] The development of this system is a priority for the Commission and will bring significant changes to case management practices for Commission Members, staff and users – most likely the largest in the Fair Work era.
- [27] The Commission is continuing to develop the MyFWC portal to provide additional functionality and improve the user experience. While MyFWC currently only assists users to lodge an unfair dismissal or general protections dismissal application, the next stage of development will enable parties in these matter types to access information about their case, such as notices of listing and directions, as it progresses. Users of the Commission's services can expect:
- to be asked to create a MyFWC account to access information about their case
 - changes to the way they access and view documents in their cases
 - to be able to view active listings and appointments within the MYFWC portal.

These changes are expected later in 2026 and are relevant to unfair dismissal and general protections dismissal cases only.

- [28] It is our aim to extend the MyFWC portal to many other case types over time to provide an end-to-end online experience for most cases lodged with the Commission. This is a significant technological uplift and we will deliver it in stages over the coming years. During the transition period the Commission will continue operating 2 case management systems. Users involved in different case types may notice differences between those case types during this transitional period.
- [29] In the interim, we will progress changes that are required to facilitate development of the system commencing with changes to online lodgment in dismissal cases. Applications lodged through the MyFWC portal realise genuine efficiencies for the Commission in processing applications. This is the Commission's preferred method of lodgment for the Form F2 and Form F8.
- [30] Our data indicates that approximately 73% of these dismissal applications are already lodged through the portal and we are now making changes with the aim to get this number closer to 99%. Users will soon be directed to lodge Forms F2 and F8 through the portal, unless there are accessibility adjustments required for particular lodgments. We will update the Commission's website and remove the paper-based Forms F2 and F8.



- [31] We have commenced external engagement about the change. Our message to regular applicants and representatives is to make the switch to online lodgment now. We will update the [Fair Work Commission Rules 2024](#) to reflect the decision to require lodgment via MyFWC later in the year.

AI-assisted agreement checklist assistant

- [32] The Commission is developing an Agreement Checklist Assistant that uses GenAI to support Commission staff carrying out pre-approval checks for enterprise agreement applications. The aim is to help staff identify for Members whether there are any concerns – including if the application is complete, accurate and compliant and whether it may not pass the [Better Off Overall Test](#) – before it is allocated to a Commission Member.
- [33] The Agreement Checklist Assistant will draw out key timeline information, compare relevant instrument clauses and flag potential issues for further review by our specialist staff. This will improve efficiency in the agreement approval process while retaining human oversight at key points.
- [34] The Agreement Checklist Assistant is a support tool for our triage staff and will not replace the decision-making function of Commission Members. A Commission Member will continue to review and determine applications, informed by the triage report from specialist staff, as is currently the case.
- [35] To support the efficacy of the Agreement Checklist assistant we will soon require the lodgment of a digital version of the agreement together with the signed copy.
- [36] The digital version of the agreement must be machine-readable. An original digital version of the agreement is required for the AI assistant to work effectively. In most circumstances this will be in a Microsoft Word format (DOCX). A PDF document produced digitally (such as a conversion from Word) is suitable for this purpose but a PDF document created by scanning a hard copy is not an original digital version. We will also update the [Fair Work Commission Rules 2024](#) to facilitate this requirement. This change is expected to be in place in the coming months.

AI-assisted helpline

- [37] Every day, the Commission's helpline receives a high volume of calls about matters that are outside the Commission's jurisdiction, such as requests for legal advice, or questions about information that is already available on the Commission's website. As Commission staff are only permitted to provide general information and cannot give legal advice or comment on individual circumstances these calls take time away from users who need staff assistance most.
- [38] To assist in managing this workload and to support the existing service, the Commission is considering the implementation of an AI voice agent to help triage helpline calls and improve service delivery. The AI voice agent could replace our current interactive voice recording as the public's first contact with the helpline.



- [39] The aim is to reduce our call wait times and redirect queries as soon as possible if the Commission is not the appropriate body for the call. We have developed an initial proof-of-concept, and we are now assessing the viability of the product and considering whether to allocate resources to development and delivery.

Document search

- [40] The Commission developed and released a new document search platform in February 2026. This was necessary to mitigate emerging risks related to older technology and the ongoing maintenance of the platform. The delivery of the new platform provides both efficiency and resourcing savings for the Commission.
- [41] When the platform launched, several issues were identified. The Commission recognises this caused problems for users and that some issues remain. We are committed to delivering systems and processes that balance user needs and expectations with operational requirements. We have listened to the feedback received and allocated additional resources to remediate the document search function, fix identified problems and improve the platform.
- [42] Regular users of the platform should expect ongoing enhancements and bug fixes over the coming months. If you have feedback or are experiencing issues, please use the [document search feedback form](#) available in the platform. If you leave your contact details, a staff member will contact you to discuss the issue. You can also [request a document](#) you are unable to locate to be emailed to you.

Internal organisation review

- [43] The Commission is undertaking an internal organisational review to address resourcing and workload pressures. The purpose of the review is to develop a clear, agreed and long-term plan to support future operational and financial sustainability. The review is confined to opportunities where we have a reasonable level of direct control and focusses on 5 key areas:
- where we work
 - how we work
 - external supplier expenditure
 - structure and roles
 - technology and automation.
- [44] The Commission is consulting extensively with Members and staff through the review. There are opportunities for efficiencies and savings through reviewing our property profile, exploring automation, GenAI integration and through natural attrition.

Property profile

- [45] Over recent years, Commission Members and staff have embraced flexible working arrangements and the benefits of a hybrid working model. Consistent with evolving



community expectations, an increasing proportion of Commission matters are now conducted online, or in hybrid formats, rather than fully in person.

- [46] The use of public hearing rooms is now the exception rather than the rule in many case types. Similarly, attendance at public counters and in-person lodgments has reduced significantly, reflecting a clear preference of how the community wishes to interact with the Commission.
- [47] The Commission maintains a tenancy in each capital city and expects property to remain a critical element of its service delivery. The Commission's tenancies are specialist in nature, which means they are not readily available in the general commercial property market. They require significant capital investment to support the Commission's operations, particularly for hearing and conference rooms equipped with bespoke technology.
- [48] Notwithstanding this, the Commission has 2 major tenancy decisions approaching within the next 3 years. The Melbourne tenancy agreement concludes in December 2027 and the Canberra tenancy in mid-2028. The Melbourne tenancy is the Commission's largest financial commitment and, given the size of the tenancy, we are exploring options to reduce our footprint. In Canberra we are looking at opportunities to co-locate with other government agencies as we already do in other locations.
- [49] We anticipate that these options would provide the Commission with crucial savings in future years while ensuring that we meet our service delivery obligations.

More information and feedback

- [50] The pace of change at the Commission is high, and regular users should expect changes in how they interact with our services. The Commission will continue to listen to and work closely with key stakeholders to design and implement solutions that balance operational needs, efficiency and the needs of users.
- [51] Consultation and feedback are central to the reform program and stakeholders can expect invitations to webinars, regular communications and dedicated information resources.
- [52] We have established a reference group with representation from peak bodies to provide an open and collaborative forum for discussion around change at the Commission. Those external members include:
- ACTU
 - AiGroup
 - ACCI
 - COSBOA.
- [53] This is in addition to the Commission's existing [stakeholder user groups](#) including the Small Business Reference Group and Enterprise Agreements and Bargaining Advisory Group, which remain crucial engagement forums.



[54] We also welcome feedback on the reform program and the initiatives underway. To provide feedback or if you need more information, please contact Feedback@fwc.gov.au.

Murray Furlong
General Manager
Fair Work Commission

END

Media inquiries

Fair Work Commission Media Team
Phone: (03) 9063 7610
Email: media@fwc.gov.au.

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) @fwc.gov.au>
Sent: Monday, 17 November 2025 5:39 PM
To: COSTELLOE,Sarah
Cc: HARB,Diab; Murray Furlong; Zoe Bright; s. 22(1)(a)(ii); JONES,Henry; s. 22(1)(a)(ii)
Subject: RE: General protections discussion - data and demand [SEC=OFFICIAL]

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OFFICIAL

Good afternoon Sarah,

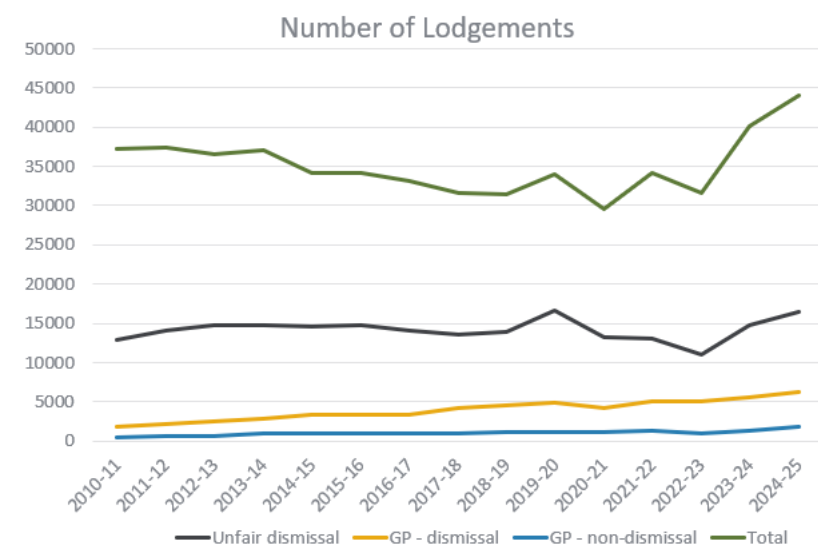
Thank you for the opportunity to review your draft documents and my apologies for missing the midday deadline.

Please see staff level comments below.

Notes on the placemat

s. 22(1)(a)(ii)

Graph 1



This graph in the placemat shows that UD dismissals are heading higher than the height of the Covid pandemic, where the Commission received an increase in lodgements directly related to vaccine related dismissals. Significant additional resources were diverted from other business areas at the Commission to deal with these significant spikes in 2020-21 and 2022-23 – current Q1 data for 2025-26 indicates that that upward trend continues.

For Q1 2025-26, the Commission received 4,878 unfair dismissal lodgements – 43% above the three year average. Extrapolated over four quarters, if the trend continues, the Commission will expect to receive 19,512 UD matters this FY.

For Q1 2025-26, the Commission received 2,120 general protections dismissal lodgements – 57% above the three year average. Extrapolated over four quarters, if the trend continues the Commission will expect to receive 8,480 general protections dismissal matters.

For Q1, 2025-26, the Commission received 694 general protections – other lodgments – 135% above the three year average. Extrapolated over four quarters, if the trend continues the Commission will expect to receive 2,776 general protections – other matters. In 2024-25, the total number of general protections – other lodgments was 1,599.

You will note the President in his 14 November 2025 Statement indicates that the Commission will look to review case management processes for general protections – other matters next.

s. 22(1)(a)(ii)

Process maps

Both UD and GP dismissal process maps

For both of these maps, when an application is dismissed on jurisdictional grounds, those decisions are appealable to a Full Bench and onwards to a Court.

UD process map

“Appeal dismissed” should not move to “matter resolved order issued” only. Appeals (even when they are contained to permission to appeal) which are dismissed can be subject to judicial review.

General protections dismissal process map

The flowchart should be amended to accord with procedural changes outlined by President Hatcher in his [Statement](#) of 14 November.

If application is out of time, these are now escalated to Member for consideration. A Member may dismiss an application on the application alone. A Member may choose to serve an application on a respondent and seek a response. EOT to be determined before matter proceeds.

General protections conferences are held by staff under delegation and Members. It might be worth a discussion to ensure that part of the flowchart is correct.

Staff conferences are conducted and a report on the conference provided to a Member to determine whether a certificate should be issued. Many certificates are issued without a Member conference having been conducted.

Additionally, while the flowchart does include the process for a jurisdictional objection to be dealt with in a general protections matter, this does not indicate the workload associated with dealing with these matters. As outlined in correspondence sent to the Department previously, following the decision in *Milford*, in June 2023 the Commission's case management process was changed so that when a respondent raises a jurisdictional objection:

- the objection must first be determined by Member of the Commission, and
- the matter proceeds to conference only if the objection is dismissed.

-

Determination of a matter by a Member may include: review application and response, holding of a Mention/Directions hearing, conducting an evidence hearing, considering materials and preparing and finalising written decision. Administrative support staff assist a Member to program these processes.

For consent arbitration – after lodge consent arbitration application, there should be an “arbitration” box before the “order made” box.

General protections non-dismissal process map

Before an application proceeds, after the application is served on the respondent, the Commission must ascertain whether the Respondent consents to attending a conference. If the employer does not consent, the matter cannot proceed, even if the respondent raises a jurisdictional objection. Employer consent should be the first hurdle in the workflow.

If you would like to discuss any of the above, please let me know and I can make time to discuss with the team.

Kind regards,

s. 22(1)(a)(i)

s. 22(1)(a)(ii) (she/her)

Director

Government Relations

Fair Work Commission

Tel: s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)

From: S. 22(1)(a)(ii) <[s.22\(1\)\(a\)\(ii\)@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)>
Sent: Wednesday, 12 November 2025 4:53 PM
To: HARB,Diab <[s.22\(1\)\(a\)\(ii\)@dewr.gov.au](mailto:s.22(1)(a)(ii)@dewr.gov.au)>; COSTELLOE,Sarah <[s.22\(1\)\(a\)\(ii\)@dewr.gov.au](mailto:s.22(1)(a)(ii)@dewr.gov.au)>
Cc: Murray Furlong <[s.22\(1\)\(a\)\(ii\)@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)>; Zoe Bright <[s.22\(1\)\(a\)\(ii\)@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)>; [s.22\(1\)\(a\)\(ii\)@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)>
Subject: General protections discussion - data and demand

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OFFICIAL

Good afternoon Diab and Sarah,

Thank you for your time earlier today.

Please see attached notes referred to by Murray during the discussion.

Please also see President's statement which has been published this afternoon - [President's statement on reforms to general protections dismissal application processes | Fair Work Commission](#)

As discussed, I am happy to be connected to your teams working on your briefing.

Kind regards,

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) (she/her)
Director, Government Relations
Legal, Performance and Engagement Branch
PID Authorised Officer



Fair Work Commission
Australia's national workplace relations tribunal

T s. 22(1)(a)(ii)

E s. 22(1)(a)(ii) <[s.22\(1\)\(a\)\(ii\)@fwc.gov.au](mailto:s.22(1)(a)(ii)@fwc.gov.au)>

11 Exhibition Street, Melbourne Victoria 3000
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s. 22(1)(a)(ii)



At the Fair Work Commission we respect and celebrate the diversity of our communities and we are committed to creating a safe and welcoming space for all.

We acknowledge that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to Country and pay our respects to their Elders past and present. This email was sent from Wurundjeri Woi Wurrung country.

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