



President's statement

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

Justice Hatcher, President

Sydney, 14 February 2025

[1] This statement provides a final update on the Fair Work Commission's approach to the approval of enterprise agreements in the building and construction industry and enterprise agreement approvals more generally.

[2] Following media reports alleging contraventions of the *Fair Work Act 2009* (FW Act) in relation to the making of enterprise agreements in the building and construction industry, I issued a statement on 30 July 2024 explaining that I had decided that the Commission would be taking additional measures in relation to approval of enterprise agreements in the building and construction industry where the Construction, Forestry and Maritime Employees Union (CFMEU) or any branch in its Construction and General Division was an applicant, employee bargaining representative, or signatory. These measures were intended to establish additional layers of scrutiny in the approval process for such agreements and to facilitate the provision of information by industry participants and the public that might be relevant to the way in which such agreements were made.

[3] The 30 July 2024 statement indicated that the implementation of these additional measures may have an impact on timeliness of the approval of enterprise agreements, and that the Commission was required to balance the need for timely approval of enterprise agreements with the requirement to ensure statutory compliance under the FW Act.

[4] In a subsequent statement published on 11 September 2024, I provided an update as to the Commission's approach to the approval of enterprise agreements in the building and construction industry. This update confirmed the establishment of a consultative process between the Commission and the Administrator of the Construction and General Division of the CFMEU, Mr Mark Irving KC, with the aim of enabling an open and cooperative dialogue to avoid undue delay in the determination of enterprise agreement approval applications in the building and construction industry.

[5] The additional measures implemented from July 2024 were successful in identifying a significant proportion of non-compliant building and construction industry enterprise agreements. The proportion of agreement approval applications from that sector which were either rejected or discontinued after the Commission had identified significant problems under the new procedures was approximately 13 per cent for the period up to 28 November 2024, compared to less than 4 per cent for agreements generally.

[6] As a result of continuing open and collaborative dialogue between Mr Irving and his administration staff and the Commission's Agreements Team, led by Deputy President Masson, I now have a significant degree of confidence that enterprise agreement approval applications in the building and construction industry which are now being lodged have the

same level of compliance as for enterprise agreements generally. For the period from 28 November 2024 until 3 February 2025, the rejection/discontinuance rate for building and construction industry agreement approval applications has fallen to 3.5 per cent, which is in line with the trend for agreements generally. As a result, these applications are now being dealt with according to the same procedures as for all other agreements.

[7] As anticipated, the measures put in place for building and construction industry enterprise agreements in 2024 has resulted in a slippage in the timeliness for the approval of enterprise agreements generally. This has been exacerbated by sustained high lodgments in applications across all areas of the Commission's jurisdiction during 2024, the need to direct resources to ensure the successful implementation of new functions conferred by the Closing Loopholes legislation, and some short-term staffing constraints in the Commission's Agreement Teams. In FY 2023/24, the median period for determination of enterprise agreement approval applications from the date of filing was 16 days. However, for the first half of FY 2024/25, this reached 28 days as a result of the factors I have identified.

[8] A range of measures have been put into place to ensure that this slippage is only temporary. The Commission has now resolved the staffing issues in its Agreements Team, the vast majority of activities associated with implementing its new functions has been completed, and I am taking steps to ensure that Member resources are allocated in a way which appropriately prioritises the speedy approval of compliant enterprise agreements. As a result of these measures, the Commission's timeliness performance has already significantly improved. For agreement approval applications lodged and determined since the beginning of 2025, the median time is down to 15 days. I am confident that the Commission's timeliness performance will soon return to FY 2023/24 levels on a longer-term basis.

PRESIDENT