

Final Report

# Unfair dismissal

## User-experience research

March 2018

### Overview

This Report documents Cube Group's observations from user-experience research into the Fair Work Commission's unfair dismissal process.

The report draws on the insights, experiences and ideas of user experience workshop participants as well as feedback from conciliators, other Commission staff and Members.

Making Public Value Happen.



## Contents



This Report presents Cube Group’s observations from research into the Fair Work Commission’s unfair dismissal process.

The Report summarises the qualitative feedback and suggested improvements identified by workshop participants. It also makes recommendations for changes to case management processes and communication for each step of the process.

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## Overview



The purpose of this research is to identify challenges and explore opportunities to improve the Commission's unfair dismissal process.

This research adopts user design as a tool for improving fairness and access, increasing efficiency, and creating better engagement with the Commission's users.

### Unfair Dismissal

More than 40 per cent of applications made to the Fair Work Commission are related to claims of unfair dismissals. Sustained demand in this jurisdiction and changing characteristics of users has brought significant workload pressures for the Commission and its staff in recent years.

The proportion of self-represented parties engaging with the Commission continues to grow. The needs and expectations of users are shifting, and these changing expectations are influencing the way the Commission's services are delivered.

### Creating Public Value

Australians value a modern and agile employment relations system that supports employees and employers alike. It is increasingly important for public value organisations to design their services in-line with their users' needs, expectations and preferences.

Over the coming years, public value organisations such as the Commission will need to think deeply about how they can continue to evolve and adapt to their changing environments and meet future service needs, as well as shifting community expectations.

The research detailed in this report suggests a range of opportunities to improve the Commission's unfair dismissal process. The findings and recommendations in this Report should support the Commission's ongoing work to promote fairness, improve accessibility and increase efficiency, amid broader changes within the employment relations system.

## Key findings



Key insights from workshops and consultations include:

- All things considered, users were generally satisfied with the actual experience of conciliation and hearings, and welcomed the opportunity to provide feedback.
- Enhancing case management processes, especially at the beginning of the process, could benefit both applicants and SME respondents.
- Written correspondence, forms and other communication tools are difficult to understand, use 'legalese' and are not simple in format.
- Though the Commission's online information resources are useful, the website itself is difficult to navigate.

Applicants and small and medium-sized enterprise (SME) respondents shared their experience across each step of the unfair dismissal process, as well as their views on the employment relations system more broadly. Key findings and suggested improvements includes:

### 1. Case management processes

Applicants' and SME respondents' feedback suggests that overall, the user experience could be improved through enhanced case management processes. Connecting applicants and SME respondents with a case manager at the beginning of the process could encourage both parties to actively engage in the process, build trust in the process, develop a better understanding of the system, and could reassure self-represented users that support and information resources are available.

### 2. Correspondence and engagement

The Commission's correspondence and communication with users were generally perceived as 'pain points'. The Commission's emails and correspondence was often perceived as 'cold' and 'too official'. The purpose of the communication, language and format together contributed to users' frustration and anxiety. Using plain English in correspondence, forms and other communication tools could improve users' experience of the overall process.

### 3. Information and resources

Users generally agreed that the Commission provided relevant information and useful resources. However, many users had difficulty locating the resources they needed themselves. Consolidating guides and other resources to reduce duplication and volume, developing a more streamlined website interface and better search functionality could improve user access to information. Providing information directly to users at the right times and reframing messages to better align with what users want to know would also be beneficial. More broadly, information about informal, low-cost pathways to accessing justice could also be promoted to assist users navigate the unfair dismissal process.

These key findings are explored in further detail in *Section 4: Systems Suggestions* and *Section 5: Step-By-Step Observations*.



## 2. Background & Context

## Background



The number of self-represented parties engaging with the Commission continues to rise. Increasing numbers of self-represented parties means that the needs and expectations of clients are shifting.

It is important to examine client experience through qualitative (and quantitative) methods on a regular basis to understand what practices work well and how they can be optimised. It is also an opportunity to identify where long-standing procedures are at risk of misalignment with contemporary user needs and expectations.

The Commission's review of unfair dismissal explores applicants' and SME respondents' experience from their first interaction with the Commission to their last.

'User design' principles can assist public sector organisations to continuously innovate and adapt in order to deliver improved public value to the Australian community. Enhancing user experience is a complex process for courts, tribunals and other justice system organisations. As a quasi-judicial institution, the Commission has unique responsibilities and operational circumstances to consider.



An independent body that must be impartial and balanced.



Addressing complex legal and administrative matters.



An evolving mix of users with varied skills, knowledge and experience.



Many users are likely to be reluctant participants.

In this context, improvement must be an iterative process of exploring how applicants and SME respondents experience the process, and considering feedback and ideas for improvement. Their competing needs and expectations must be carefully weighed, and operational and jurisdictional considerations addressed appropriately.

### The road so far



1. Project planning
2. Workshop design
3. Respondent workshops (x4)
4. Interim report (preliminary observations)
5. Conciliator workshop (x1)
6. Applicant workshops (x4)
7. Member workshops (x2)
8. Consolidated Report

The Commission engaged Cube to examine the user experience of unfair dismissal respondents (with a particular focus on SMEs to supplement ongoing consultation with small business) and applicants. In a series of workshops, Cube explored:

- Users' experience of the process
- Preferences and expectations
- Suggestions for service improvements or alternative practices

The Commission anticipated that users held strong opinions about the employment relations system, particularly the unfair dismissal jurisdiction and the role the Commission plays within it. While comments on the Fair Work legislation were outside the scope of Cube's brief, the client experience workshops were designed to allow for and manage this feedback.

The Commission sought to investigate specific elements of the client experience, including:

- Communications (forms, correspondence, notices, etc.)
- Information resources (guides, benchbook, 'how to' information embedded in communications, videos, etc.)
- Engagement with Commission staff and Members (i.e. how staff and Members treated and assisted users)
- Case management (e.g. timelines, the method of hearing, rules, etc.).

Cube designed and delivered 11 workshops in line with these objectives, across three states (Victoria, New South Wales and South Australia).

Short case studies are available at **Appendix A**. Further details of Cube's methodology is available at **Appendix B**.



## 3. User Experience Insights



# 3. User Experience Insights

## Key themes



A large proportion of users expressed anger, frustration and anxiety. Common reactions include:

- Anger-based reactions
- Fear-based reactions
- Loss-based reactions
- Surprise-based reactions

The most common negative expressions have been grouped (see right) and are explored further throughout this Report.

Overall, users expressed strong feelings about their experience of the unfair dismissal process. While users described their thoughts and feelings at each stage, the most common expressions at the ‘book-ends’ (start and end) of the experience included frustration, anxiety and uncertainty.

Negative sentiments are to be expected given that a negative experience has brought the users to the Commission in the first place and that inevitably there will be losses and compromises to be made along the journey. Importantly, the most powerful negative feelings expressed were about the (alleged) dismissal itself, the conduct of the ‘other side’ and about the employment relations system more broadly, rather than the Commission’s service delivery.

Users’ assessments of the Commission’s service delivery are considerably more understated and caveated. Irrespective of the outcome, they generally felt the *process* was reasonably straightforward, with various opportunities for improvement.



- **Anger-based reactions**  
Frustration, annoyance, offended, outrage, victimised, bitter, vengeful, misjudged/pre-judged.
- **Fear-based reactions**  
Fearful, threatened, suspicious, pressured, anxious, apprehensive, nervous, stressed, self-doubt, uncertain.
- **Loss-based reactions.**  
Disappointed, despairing, sad, empty, hurt, victimised, abused, distrusted, judged, unsupported, overwhelmed, exhausted.
- **Surprise-based reactions**  
Shock, disbelief, bewilderment, confusion.

## User journey overview

The diagram below provides a visual representation of the key thoughts and feelings users experienced across the four main touch points.





## 4. Systems Suggestions

## User feedback



### Key points

The employment relations system is **confusing** and **overwhelming**, especially for first-time users and self-represented users.

Processes and correspondence is generally viewed as **cold**, and does not consider the impact of legal proceedings on users' emotional and **mental wellbeing**.

## Overview

Users shared their suggestions and feedback on the broader employment relations system and how it relates to the Commission.

This was a high priority for users, who felt that a better user experience would involve changes to the Commission's processes *and* changes to the employment relations system more broadly.

Sharing these views was cathartic for users, many of whom had a negative user experience or felt that the unfair dismissal laws were unreasonable.

Cube captured overarching systems suggestions as they arose throughout the workshops. In this summary, we briefly reference the comments and suggestions made by participants and focus particularly on those most relevant to the Commission's processes.

# 4. Systems Suggestions

## Systems Suggestions



Users shared their views on the system more broadly, and provided critiques and suggestions for broader systems improvement. These suggestions have not been qualified by Cube and are provided for information only.

Index	Systems Suggestions
S1	<p>Embed an active end-to-end case management approach to unfair dismissal matters. This may include appointing a single point of contact (i.e. case manager) at the beginning of the process. The case manager could set clear expectations for conduct and compliance from the outset, clarify timelines and key events (i.e. conciliation, arbitration) and identify incapacities as early as possible so that these can be taken into account in setting timeframes and requirements.</p> <p>The case manager could be more consultative with users about the timeline of events and deadlines for materials for the matter (within prescribed limits). This end-to-end case management approach could build trust in the process and encourage applicants and respondents to be more engaged in conciliation, conferences and hearings.</p>
S2	<p>Introduce an early triage process to screen applications. This may include early elimination of claims, such as ineligible workers and detecting 'frequent flyers' of the system.</p>
S3	<p>Promote processes, procedures and resources that support and guide self-represented users through the system. Informal and/or low-cost pathways to accessing justice could be better communicated to the community more broadly and adopted by the Commission more consistently.</p> <p>This would be beneficial to changing user perceptions that they need a lawyer/paid agent to help them navigate the system. Better understanding of available options for accessing low-cost or free justice solutions could assist in alleviating users' stress and frustration and result in a better user experience.</p>
S4	<p>Consider other alternative dispute resolution mechanisms in addition to conciliation, such as mediation and online dispute resolution.</p>
S5	<p>Encourage more user feedback and make complaints procedures more accessible. This could support a more user-centred approach to designing and delivering services.</p>

# 4. Systems Suggestions

## Systems Suggestions (cont.)



Users shared their views on the system more broadly, and provided critiques and suggestions for broader systems improvement. These suggestions have not been qualified by Cube and are provided for information only.

Index	Systems Suggestions
S6	<p>The Commission’s website could be improved or streamlined to optimise user experience. A number of user design tools could assist the Commission to enhance the website’s usability, including reducing mental effort and maintaining flow (i.e. minimise the number the ‘clicks’), a focus on guiding users towards the end goal, and helping users minimise and overcome potential errors (i.e. clicking the wrong link).</p> <p>The Commission could also consider improving the website for mobile phones and tablets, and in the interim, include a notification to users accessing the website through smart phones that they would have a better experience using a larger screen. Alternatively, designing and introducing a mobile app could improve the accessibility of information for users. The Commission should also weigh the benefit of the content about website usability on web pages, noting that it can interrupt the flow of key information that users need.</p>
S7	<p>All written materials and correspondence, including emails, notifications, forms, guides and education and information resources, should adopt clear and simple language. Additionally, any instructions and deadlines should be highlighted and consequences for missing deadlines should be clearly expressed.</p>
S8	<p>The Commission’s information resources could be streamlined to minimise duplication and ensure they are clear, simple and current. Case studies and sample text is an effective way to assist self-represented users to complete relevant forms and learn about the unfair dismissal process.</p>
S9	<p>Provide Commission staff with relevant training so that they are equipped with the skills needed to support a more active end-to-end case management approach. This may include professional customer service training, emotional intelligence coaching, mental health awareness training, and training to support culturally and linguistically diverse (CALD) communities.</p>
S10	<p>Provide guidance or links to mental health and counselling services on the Commission’s website, recognising that many users are vulnerable and may need external support.</p>



## 5. Step-By-Step Observations

# 5. Step-By-Step: Application

## 1. Research



This sub-step explores how users research the unfair dismissal jurisdiction and their options for seeking legal action. It includes an analysis of the Commission’s website, registry helpline and support materials.

## 2. Application



This sub-step explores how users approached preparing and submitting an application to the Commission. It explores the tone, length and information available on the F2 application form.

## Overview

This step is specific to applicants only. The notification and response stage is explored in the next section of the report.

### Key points:

- Many applicants indicated that they were not “at their best” immediately following their dismissal, with some taking days or weeks, to recover from the shock of losing their employment. This is the emotional context in which many applicants begin their unfair dismissal journey.
- Users with health issues, including mental health issues, found the application process particularly challenging. Some users urged the Commission to review how it engages with, and provides additional support to, individuals experiencing mental health and other issues.
- Applicants were moderately satisfied with the information and resources provided on the Commission’s website.
- There were mixed views on the tone, layout and accessibility of the F2 and options for lodgment. While some users were comfortable with the F2 structure and layout, others struggled and considered it a pain point.



# 5. Step-By-Step: Application

## 1. Research



### Key points

Most applications conducted a broad **internet search** as their initial step.

Many applicants were **unaware** of the Commission and its role in the employment relations system.

Information on the Commission’s website was **useful**.

### Initial research

- Immediately after being dismissed, most applicants conducted a broad internet search.
- Applicants searched terms such as “losing job”, “forced to resign” and “sacked”. The Commission’s website was not the first result to appear on the search engine, though usually appeared in the first four results.
- No applicants directly searched for “Fair Work Commission”.

### The Commission

- Many applicants had not heard of the Commission and did not understand the Commission’s role. Some confused the Commission with the Fair Work Ombudsman or other industrial relations agencies/authorities. Upon reaching the Commission’s website (‘Unfair dismissal’ page), some found it difficult to find the information they wanted and/or needed (or in a format that was accessible and helpful to them) due to navigation challenges as well as the large volume of materials. The guidance materials were considered useful and valuable by those that accessed them.
- Many applicants were unaware of the suite of video guides.
- Some applicants were unable to find a contact number for the Commission and noted dissatisfaction with being unable to speak to someone about their circumstances. Some felt they needed face-to-face interaction at this stage of the process to be able to absorb necessary information about the jurisdiction and the Commission’s processes.
- Applicants who did contact the Commission in person or by phone were pleased with the quality of service.
- Users who accessed the ‘duty lawyer’ program found it helpful.

## 1. Research (cont.)



### Key points

Threshold **eligibility** questions were pain points for most applicants.

Most applicants believed they needed **legal representation** or that they would be disadvantaged if they were self-represented.

Access to **low-cost or free legal advice** would have assisted applicants at this stage of the process.

### Eligibility and jurisdiction

- The issues that appeared to cause most anxiety for applicants were threshold eligibility questions (e.g. casuals, labour hire arrangements, high income threshold, etc.) and selecting the most appropriate jurisdiction at the Commission or elsewhere (e.g. unpaid entitlement, discrimination, unsafe work practices, etc).
- Some applicants were very confident that their application would be successful, having being employed on an ongoing basis for several years and feeling very strongly that the Commission would agree that the circumstances of their dismissal were unfair.
- Users suggested a short video about eligibility (for protections from unfair dismissal), or an updated “What is a Jurisdiction Hearing” video, would be helpful.

### Representation

- Most applicants believed they needed legal representation, or that they would be disadvantaged in the process if they were self-represented. However, many could not afford to engage a lawyer/paid agent because they did not have an income. Few applicants did not contemplate engaging a lawyer/agent.
- Some applicants who had legal representation at this stage assumed it was necessary/obligatory, others simply wanted to dedicate their time and energy to other things (e.g. securing new employment). Some felt it ‘tactically wise’.
- For self-represented applicants, the key question at this stage was “do I have a case?” which was not readily answered by the information resources on the website and required consideration of a range of factors. This caused many applicants to feel anxious, stressed and worried about the process.
- The eligibility quiz was useful for most users. However, access to timely, low-cost or free legal advice would be particularly beneficial for applicants struggling to absorb written information and navigate the Commission’s website.

# 5. Step-By-Step: Application

## 2. Prepare application & lodgment



### Key points

The F2 application form was a significant **pain point** for many self-represented applicants.

Self-represented applicants spent **days**, even **weeks**, researching and preparing the F2 application form.

Applicants with representation at this stage did **not** experience the same level of stress and anxiety as self-represented applicants.

### F2 application form

- Many of the self-represented applicants reported feeling anxious and stressed by the F2 application form. To these users, the F2 seemed “legalistic” and they could get overwhelmed by the instructions. These applicants were typically scared that their application would “get thrown out” or it would “damage my case” if they got any of the detail wrong.
- Many self-represented applicants felt that the process was not set up for first-time users and assumed that by not having a representative they were severely disadvantaged. Having to name (or not name) a representative at the beginning of the F2 can signal to users that they should have a representative.
- Most self-represented applicants had spent several days, even weeks, on their application (including research time). For many applicants, the essay-style format (numbered paragraphs) of the F2 was confronting. For users who were struggling with health issues, including mental health issues, an option to complete the form by selecting a response from a range of options (like a survey) would be beneficial.
- Most applicants assumed the F2 required lengthy responses, using formal language and legal terms to explain what had occurred and what they were seeking. Some participants were genuinely surprised to learn they could simply record “I want my job back” as depicted in the sample F2 displayed during the workshop.
- Some respondents and Commission staff questioned the usefulness of the F2 in its current format and queried the intended audience and purpose of the form. Most believed that the topics covered in the F2 are broadly relevant. However, as there is limited guidance or requirements for applicants on what to include in the open text fields, applicants could be overly detailed and focus on off-topic allegations or could even leave the fields blank.

### Lodgment

- Some self-represented applicants found the online application process easy and convenient and did not have trouble lodging their application. A small number had technical difficulties with online lodgment.
- A small number of users did not have computer access, so the application process was a stressor and they needed to rely on the help of others.
- Most applicants with representation at this stage had their lawyers/representatives complete the F2 application form. These applicants found this stage simple and straightforward.

## Recommendations



Some suggestions for improvement during the application stage of the unfair dismissal process were provided by users, staff and identified by Cube Group.

Index	Application Recommendations
A1	The Commission’s website could be improved or streamlined to optimise user experience. The website content and information resources could be re-worked to integrate or cross-reference more information about other jurisdictions and agencies (WorkSafe, Fair Work Ombudsman), recognising that many employees who believe they have been “unfairly sacked” visit the website for the first time not knowing the difference between jurisdictions and options for pursuing their claim. The website’s interface could also be optimised for mobile phones or tablets.
A2	Consider including information on the website and guidance that explicitly says what the unfair dismissal jurisdiction cannot provide (e.g. investigate claims, impose financial and other penalties on employers, compensate for ‘damages’, etc.) to help set realistic expectations from the outset.
A3	Acknowledging that most applicants do some independent research using an internet search engine, enhance accessibility of the Commission’s website for a range of common search terms that describe “dismissal” circumstances so that the Commission at least appears on the first page of search results, if not the first result.
A4	Assemble an information package that could be mailed out in response to inquiries from users who do not have access to a computer. The information package could include hard copies of the application and response forms and guides.
A5	Simplify the wording, layout and structure of the F2 application form and consider collecting information that is more relevant and useful for the respondent and to the conciliation process. It could be beneficial for applicants to describe “in your own words” and select from options (rather than free-text fields), where appropriate. In-text hyperlinks to information resources could also be useful. Sample answers for a range of scenarios could be helpful for setting expectations and reassuring applicants that legalese is not necessary.

# 5. Step-By-Step: Application

## Recommendations (cont.)



Some suggestions for improvement during the application stage of the unfair dismissal process were provided by users, staff and identified by Cube Group.

Index	Application Recommendations
A6	<p>Consider allocating a registry resource to ‘front desk’ service that allows users to attend the Commission and receive assistance in completing the F2 and understanding the range of information and materials.</p> <p>This face-to-face interaction would be particularly beneficial for users who have difficulty using computers, navigating the website or absorbing written information. It would also help build trust in the process, and alleviate suspicion that the Commission is “biased” towards the other party. Building trust in the unfair dismissal process early could encourage users to better engage with the process and alleviate some feelings of stress and anxiety.</p>
A7	<p>Provide links to mental health and counselling services on the Commission’s website. This would provide additional support to users, particularly vulnerable and/or first-time users. This recommendation could be supplemented with providing additional training to Commission staff (i.e. emotional intelligence and mental health awareness training). Refer Recommendation S9.</p>
A8	<p>Consider updating video guides on the Commission’s website, particularly the “How do unfair dismissal claims operate?” and “How do employees make an unfair dismissal claim?”. Introducing a video that helps explain eligibility for protection from unfair dismissal could also be helpful.</p>

# 5. Step-By-Step: Response

## 1. Receive notification



This sub-step explores how the Commission advises a respondents of an application (e.g. notification email, letters or other information).

## 2. Review & research



This sub-step explores how users approached their response to the Commission. It explores the tone, length and information available on the F3 response form and other resources.

## 3. Respond



This sub-step explores how users completed their response form. It investigates why some choose to lodge jurisdictional objections, ease of completion, and procedural understanding.

## Overview

This step is specific to respondents only.

Key points:

- There seems to be no, or limited, vetting of applications. Applications varied in length, content covered, and volume of information. Some respondents had “no idea” what allegations they were responding to and what the applicant was seeking.
- The tone and delivery style of the notification is not optimised for user-friendliness.
- The Commission’s website and support materials are not perceived to be easily accessible nor designed to support employers responding to an application.

# 5. Step-By-Step: Response

## 1. Receive notification



### Key points

The notification email, as the first touch point for respondents, was a significant **pain point**.

Some respondents experienced **technical difficulties** in receiving their notification email, due to their server's spam filters.

### Notification delivery

- The Commission's notification delivery was identified as a 'pain point' for respondents.
- Many respondents noted the initial email that served the application on the respondent could easily be missed because the subject does not convey that any action is required and it can get lost in a large volume of emails they receive each day.
- Many respondents queried why a 'formal legal process' did not involve sending the application via registered post or at least some mechanisms to confirm receipt on the day of service.
- The blank email and attached correspondence and notice were considered 'cold, impersonal, and highly official'. Consequently, users felt 'confronted', 'judged' and 'fearful'.
- Many reported the tone of the correspondence made them feel they were presumed guilty.
- The notice of listing for the conciliation felt more like a 'summons' to them than an opportunity to resolve a dispute without recourse to formal legal mechanisms. The conciliation listing signalled to some that the Commission had decided that they were guilty.
- Users noted an absence of explanatory material and guidance tools created feelings of uncertainty, anxiety and confusion. Users indicated that this made them feel that they needed legal representation or would be severely disadvantaged if they didn't.

### Technical issues

- Some respondents had to retrieve the notification from a junk email folder, sometimes days out from the scheduled conciliation when the Commission followed up.
- The names of the attachments (a series of letters and numbers) possibly contributed to the Commission's email being caught by spam filters.

# 5. Step-By-Step: Response

## 2. Review & Research



### Key points

Many respondents were **frustrated** and annoyed by the **level of information** contained in the application form (either too much or too little).

Many respondents were not satisfied with the Commission's **case management support** at this stage of the process.

Some respondents felt the Commission's website was **biased** towards applicants.

### Application form

- First-time respondents reported feeling uncertain, confused, and stressed by the F2 application form.
- Many respondents felt it was unfair the Commission would accept an application that was incomplete or confusing. Some respondents reported that the application form they received did not make a coherent argument that they could 'respond' to.
- Some respondents were critical of the F2 application form. Criticisms included: frustration over a lack of information about what the applicant was alleging and what they were seeking in order to effectively respond; overwhelmed by the large volume of material contained in the application form; out-of-scope claims; and uncertainty about whether and how to respond to them.

### Case management support

- Many respondents felt the Commission did not provide a sufficiently accessible support system because they were unsure whom they could call (e.g. a case manager), and where to seek further information about the process they have been drawn into.

### Research

- Most respondents who accessed information resources had mixed feedback about its usefulness. Some noted the Benchbook had great potential to be helpful to respondents, but they were overwhelmed by the range of topics covered in the document. Respondents felt it could be a highly useful resource if it were simplified or if it was easier to navigate.
- Time-poor respondents wanted clear direction to which document is relevant to them at this stage of the process.
- Respondents who accessed the Commission's website felt it was difficult to navigate, aggravating users' pre-existing frustration with the process.
- Some respondents felt the information on the website was designed primarily for applicants (i.e. "If you have been dismissed from your employment you may be able to make an application to the Fair Work Commission ...") and they did not read further or download information resources.
- Similar to the application stage, respondents suggested that access to timely, low-cost or free legal advice at this stage would be beneficial, particularly for first-time users.



# 5. Step-By-Step: Response

## 3. Respond



### Key points

The F3 response form was generally **straightforward** and easy to complete.

Processes around **service** of the F3 response form contributed to respondents' view that the Commission is **'pro-applicant'**.

Respondents were unsure if they were able to raise a **'jurisdictional objection'**.

### F3 employer response form

- Most respondents reported the F3 response form was reasonably intuitive and recognised how it relates to the topics and format of the F2 application form.
- Many respondents approached responding in a manner that reflected the level of detail provided in the F2 application form.
- Some respondents spent many hours or days on the F3 response form (including research), while other spent an hour or forwarded it to their solicitor to complete.
- Some respondents felt that completing the F3 response form was 'redundant' because they presume the Commission does not use their response to inform case management. Most respondents with this view were not first time users.

### Service

- Many respondents commented that the seven day timeframe to respond was unreasonable, noting that applicants had up to 21 days to lodge their application form. Respondents felt that the F3 response form deadline was many days (or weeks) ahead of the conciliation, so did not understand the urgency.
- Some respondents were frustrated by having to serve the F3 response form on the applicant, given the Commission serves the F2 application form on the applicant's behalf. This contributes to some respondents perceiving the Commission to be 'pro-applicant'. Other respondents did not serve the F3 response form on the applicant for this reason or because they were not aware of the requirement.

### Jurisdictional objection

- Respondents demonstrated varying degrees of understanding of a 'jurisdictional objection'.
- Specifically, the term 'jurisdictional objection' itself can make the concept inaccessible to some users, with some checking the box because they "objected" to the application rather than having grounds to challenge the eligibility of the applicant to seek a remedy.
- Respondents reported feeling unsure whether they had a right to object, not finding a clear, highly accessible description of when you can/cannot object and why.

# 5. Step-By-Step: Response

## Recommendations



Some suggestions for improvement during the response stage of the unfair dismissal process were provided by users, staff and identified by Cube Group.

Index	Response Recommendations
R1	Soften the language, layout and structure of the notification correspondence and include some content in the body of the email rather than rely on attachments. Such changes would require balancing the seriousness of the communications and that it is a legal process with the need to convey this information in a balanced, clear and concise manner.
R2	Provide key resources to respondents at the time of service that contains critical information about immediate next steps and explanatory material to assist with completing the F3 response form. This could include sample F3 response forms for a range of scenarios (similar to the samples proposed for the F2 application form), as well as information about the purpose of conciliation.
R3	Ensure changes to the F2 application form recognise respondents as a key audience for this form and promote greater consistency of detail in the F2 application form. These changes would assist respondents to understand the purpose for the application and how to respond to it meaningfully. This could boost cooperation with the process and result in more timely and useful responses. Consider applying similar changes to the F3 response form so that the documents remain aligned in terms of topics covered, sequence and format.
R4	Simplify the language in the F3 response form regarding the purpose and eligibility criteria for jurisdictional objections. This would be particularly useful for self-represented and first-time respondents. A simple quiz and access to pro-bono legal advice at this stage would be beneficial.
R5	Connect respondents with a case manager at the beginning of the process and confirm the F2 application form has been served successfully, rather than following up after the deadline for lodgment of the F3 response form has passed. This could help build trust in the process and alleviate the suspicion that the Commission is “biased”, encourage respondents to actively engage in the process, and could reassure self-represented respondents there is support and a range of information resources available.

# 5. Step-By-Step: Conciliation

## 1. Prepare for conciliation



This sub-step explores how users prepared for conciliation, including preparation of notes or other documentation, using the Commission’s resources, and seeking advice.

## 2. Attend conciliation



This sub-step examines experiences at the conciliation, including conciliators’ practices, as well as users’ expectations throughout.

## 3. Post-conciliation



This sub-step looks into what happens after conciliation. It investigates user communication, matter closure activities, and how users felt.

## Overview

### Key points:

- Overall, users appreciated the opportunity to participate in conciliation.
- Many users entered the conciliation believing the purpose was to discuss the merits of the matter and to receive some form of “finding” in relation to the claim, rather than to resolve the matter through focusing on solutions and negotiating a settlement. They typically viewed conciliation as a “requirement” rather than an “opportunity”.
- The quality of conciliation varied, with some users very impressed and other feeling it was a “waste of time”.
- The engagement with the conciliator can end prematurely for users who are unclear about the precise terms of settlement (particularly where a letter of reference is included) and how to execute a settlement agreement.
- Users (particularly applicants) who did not have conciliation (e.g. if the respondent refused to attend) can miss a valuable learning experience in the process. This gap could potentially be filled by regular seminars conducted by conciliators or pro-bono lawyers.

# 5. Step-By-Step: Conciliation

## 1. Prepare for Conciliation



### Key points

The **purpose of conciliation** was unclear for many applicants and respondents.

During conciliation, many users focused on **monetary compensation** and may not have considered a wide range of solutions.

Logistical difficulties during this step added to users' **frustration**.

### **Purpose of conciliation**

- Users felt the Commission's processes and documentation (including the notice of listing) did not clearly convey the purpose of conciliation, what it involved and how long it would take. For respondents in particular, this information is critical for getting the right people to participate (i.e. someone with authority to settle).
- Many applicants and respondents were unclear what conciliation meant, leading some to assume it was an opportunity to argue their case before the Commission.
- Many users were unaware that conciliation is an optional process, while others believed it would "damage their case" if they did not participate in conciliation.

### **Research and remedies**

- Both applicants and respondents reported not knowing where to find information about how to prepare for conciliation. This led users to prepare arguments/opening statement and compile evidence, rather than focusing on solutions.
- Of those who were preparing to negotiate at conciliation, most focused on monetary compensation. Applicants sought advice from colleagues, peers, and internet searches to gauge what kind of settlement they could achieve or should expect. Many were aware of the 26 weeks compensation cap and that reinstatement was uncommon.
- Many users had looked at the conciliation results and remedy information on the website, but wanted more contextual information, such as industry, occupation of the applicant, business size, how many weeks pay the amounts comprise, how much is unpaid entitlements compared to compensation, and how much it would typically cost to pursue a decision.

### **Logistical issues**

- Some users expressed frustration at having a conciliation date dictated to them, and having to "prove" unavailability to secure an adjournment. Some felt the Commission gave the other party preferential treatment regarding adjournments, perceiving the Commission to be more accommodating or lenient toward the other party (most notably respondents held this view).
- Some applicants did not receive the F3 response forms prior to conciliation, which added to their pre-existing feelings of distress. These applicants believed the respondent was deliberately "playing games" which entrenched their position and negatively affected their willingness to consider solutions.

# 5. Step-By-Step: Conciliation

## 2. Attend Conciliation



### Key points

Some users felt disappointed their expectations of conciliation **did not match** what actually happened.

Some users felt angry and frustrated the **merits** of the case were not discussed during conciliation.

A small number of users felt the conciliator was **biased** towards the other party.

### Misalignment between expectation and reality

- Users noted a substantial misalignment between their expectations of what would happen and what actually happened. Some users said they would have bypassed conciliation if they knew the merits of the claim would not be assessed and a “finding” would not be made.
- Some users felt shocked, angry and disappointed during the conciliation because the conciliator wanted to focus on settlement and concluding the matter, rather than on the facts and merits of the claim. Compounding their frustration was the time and effort they put into their application/response.
- Respondents were most critical of how quickly the subject of a monetary settlement was raised during conciliation (but notable among applicants too).
- The expression “go-away money” was referenced by several respondents.

### Conciliators

- A limited number of users described conciliators as “biased” noting that some enter the conciliation believing the Commission is favouring the other party and are looking for cues to support this belief. Directing a series of questions at one party, or interrupting a participant, were interpreted as signs of conciliator bias.
- A small number of users felt the conciliator was in a rush to “wrap things up”.
- Some users felt the conciliator did not act quickly or strongly enough to condemn perceived bullying or harassing behaviour of the other party. Some users felt vulnerable having been subjected to threats prior to conciliation.

### Logistics

- Overall, users felt conciliations were run efficiently.
- Applicants were generally pleased that conciliation was conducted over the phone so that they did not have to come face-to-face with the employer. Respondents appreciated its convenience as they did not have to leave their business to attend.
- Some users were confused and frustrated by the amount of time spent on hold.
- Some users said they felt rushed or that it ended abruptly.

# 5. Step-By-Step: Conciliation

## 3. Post-Conciliation



### Key points

Reactions immediately post-conciliation ranged from “**worthwhile**” to “**a waste of time**”.

Lack of “**closure**” was disappointing and unsettling for some users.

Moving to arbitration was **daunting** and was a stressor for some users.

### Immediate reactions post-conciliation

- For some users, regardless of the outcome, conciliation was an important step: “an acknowledgment that the Commission cared about the matter”.
- User perceptions of the value of conciliation varied from “worthwhile” to “a waste of time”.
- Users that entered the session with misaligned expectations were disappointed and frustrated with the process, perceiving it as “focused on money, not merits”.
- Some users who entered conciliation confident in the strength of their case, but ready to negotiate, were disappointed in the level of compromise required or upset by the conduct of the other party.
- Some respondents felt they were “ahead commercially but had lost morally”. Some noted feeling deflated. Many felt relieved that it was over.
- Users generally didn’t feel in control of the outcome or empowered by the process. They viewed the conciliator as the adjudicator in control of the outcome, rather than the process empowering the parties to resolve the matter according to agreed terms.

### Assistance with ‘next steps’

- Some users felt the process of executing the settlement terms and deed of release as unduly slow (after the conciliator had sent a draft to the parties). Many felt their engagement with the conciliator ended abruptly or prematurely, and they would have benefited from further support to execute the settlement.
- Some noted a lack of finalisation activities after settlement had been reached (e.g. a closure of matter message with links to learning resources) or guidance on what might happen next (e.g. what happens if a party doesn’t honour the agreement? What if there is still a workers compensation claim to deal with?) or where to seek assistance to enforce the settlement terms.
- For users whose matters didn’t resolve through conciliation, particularly those who had a positive experience with the conciliator, moving to the next step was daunting and marked by anxiety and apprehension.
- Some users received ‘directions’ from the conciliator for filing more materials with the Commission, while others were advised to wait two weeks and if they hadn’t heard by then to contact the Commission. Users felt two weeks was an unreasonable amount of time to wait for the matter to progress to the next stage of the process, especially when they were instructed not to contact the conciliator again.

# 5. Step-By-Step: Conciliation

## Recommendations



Some suggestions for improvement during the conciliation stage of the unfair dismissal process were provided by users, staff and identified by Cube Group.

Index	Conciliation Recommendations
<b>C1</b>	Consider introducing a pre-conciliation phone call from a registry case manager to explain the conciliation process to first-time users. This would be a light-touch approach that would help demystify the conciliation process.
<b>C2</b>	Communicate the purpose of conciliation more effectively to users. This could be covered in the pre-conciliation phone call (suggested in Recommendation <b>C1</b> above). Clear information about how the conciliation is run would better align users' expectations with the conciliation process. A checklist of considerations, things to do and the types of questions conciliators would usually ask would be beneficial to users.
<b>C3</b>	Introduce new processes or technology that enable scheduling of conciliation to be more flexible and take account of the availability of users. Consider holding conciliation outside of standard business hours.
<b>C4</b>	Ensure users have received all relevant materials (e.g. F3 response form) prior to conciliation. This would assist conciliators and applicants to prepare for conciliation and feel that it is a balanced and fair process. There may be benefit in seeking additional information from parties if all fields of the F2 and F3 have not been addressed to help all parties prepare.
<b>C5</b>	Improve the language and structure of the Notice of Listing so that it clearly sets out how the session would run. This could include providing a meeting agenda with links to additional information. It could also be clear that attendees, most notably for the respondent, should have authority to settle/negotiate.

# 5. Step-By-Step: Conciliation

## Recommendations (cont.)



Some suggestions for improvement during the conciliation stage of the unfair dismissal process were provided by users, staff and identified by Cube Group.

Index	Conciliation Recommendations
C6	Consider publishing case studies (de-identified examples) of matters that have been through conciliation and publish more contextual information about conciliation results, such as number of weeks' pay the monetary amounts comprise and other information, as available.
C7	Consider developing information materials that tell the story of conciliation in a positive way and counter misinformation and misconceptions.
C8	Explore how the conciliator can follow up with parties after conciliation to assist with executing the settlement terms within the "conciliation process". This could help parties resolve the matter quickly, particularly where any terms were not thoroughly defined/agreed and avoid settlements collapsing. A key contact person (e.g. case manager) for parties to contact if there is non-compliance with the settlement terms, or guide on next steps (e.g. small claims) could also be beneficial for users.
C9	Update correspondence, notices and guidance materials to adopt plain language, and provide clear and concise information about the next steps. Consider introducing a "matter closure" email/letter that provides links to relevant resources, such as the FWO training on having difficult conversations.
C10	Consider delivering seminars/webinars or other methods to deliver information to self-represented parties who do not have a conciliation (e.g. when the other party refuses to attend).



# 5. Step-By-Step: Arbitration

## 1. Prepare for conference/hearing



This sub-step investigates how users prepare for a conference/hearing. It includes their review of Commission services and resources, and where users seek legal advice.

## 2. Attend conference/hearing



This sub-step explores users' experience of the hearing. It includes investigation of users' experience of the venue, the hearing itself and the immediate moments post-hearing

## 3. Post-conference/hearing



This sub-step investigates how users consider their options moving forward, including guidance from the Commission at this stage.

## Overview

This step includes preparing for arbitration proceedings, including receipt of directions for filing written submissions, attendance at a 'directions conference' and Member-assisted conciliation.

Most users who progressed to arbitration were issued directions and some prepared and lodged submissions, while for others the matter resolved/concluded early in the arbitration stage of the process.

### Key points:

- Overall, users appreciated the opportunity to engage with the Commission.
- Expectations of the Commission and the seriousness and legality of the process shift significantly upon entering this stage of the process.
- Users reported there are limited explanatory resources to help them understand this stage of the process.
- Users perceived the conference/hearing to be confronting and difficult to perform within, partly due to the behaviour of opposing parties, their lack of understanding of the process and limited knowledge of the legislation and case law.
- Applicants found the process of giving evidence and cross-examination particularly confronting.

# 5. Step-By-Step: Arbitration

## 1. Prepare for conference/hearing



### Key points

Overall, users felt this stage was **stressful and confusing**.

Users were **disappointed** in the lack of pre-conference/hearing assistance from the Commission.

The research materials on the Commission's website **lacked relevant 'case studies'** to help users prepare for the conference/hearing.

### Emotional experience

- Users reported this stage in the process to be stressful and confusing. For most users, the arbitration stage began with receiving Directions for filing submissions, which was embedded in a Notice of Listing.
- Users, especially first-time users and self-represented applicants, were concerned with the limited assistance of the Commission at this stage of the process.
- Some users explained they were highly stressed and anxious during this stage. Many were feeling unsure what to do.

### Pre-conference/hearing assistance

- Users in Sydney and Adelaide had participated in proceedings before a Member, conducted over the phone (and a couple had attended in-person) before they were due to file submissions or even before any directions had been issued. Overall, they appreciated the opportunity to engage with the Commission.
- There was some confusion among users about the purpose and objectives of the events (i.e. conference, hearing, pre-hearing mention), similar to that expressed about conciliation.
- Users felt there was not enough information resources on procedural-type events, which made it difficult for users to adequately prepare.
- A small number of users who attended a 'pre-hearing' event in-person said it felt like the actual hearing, given the formal nature of the exchanges.
- Many users were surprised to be talking (again) about settling the matter and perceived a strong focus of the Commission on settlement. Some welcomed it noting that they did not intend to pursue a decision from the Commission and were keen to avoid preparing more documents. However, others felt they were placed in a difficult position, not wanting to be viewed as difficult/uncooperative by the decision-maker.
- Users in the roster system were disappointed not to receive a courtesy/introductory call and invitation to ask questions about what they needed to do and where to get help.
- Some users in Melbourne who had lodged submissions wanted reassurance that they met the Commission's standards or some other feedback or simply confirmation from the Commission that the materials were received.
- Some users were unaware they could apply to the Commission to obtain documents (order to produce) or to get a witness to appear at the conference/hearing.
- Some users claimed they were unaware decisions would be publicly available and would not have proceeded through arbitration, noting they could be caught out by the publication of (interlocutory) decisions (e.g. on representation) prior to the conference hearing and substantive merits decision.

# 5. Step-By-Step: Arbitration

## 1. Prepare for conference/hearing (cont.)



### Key points

Overall, users felt this stage was **stressful and confusing**.

Users were **disappointed** in the lack of pre-conference/hearing assistance from the Commission.

The research materials on the Commission's website **lacked relevant 'case studies'** to help users prepare for the conference/hearing.

### Research materials

- Overall, users felt the absence of information from the Commission caused anxiety about what and how to prepare.
- Some users explained they would have prepared far more extensively for the arbitration conference/hearing or sought representation if they had known what would be required of them.
- Users noted an absence of 'case studies' to provide clear guidance on what factors/criteria a Member will consider in making a decision. Users referenced the Benchbook, with applicants and respondents both reporting that while it could be useful, they found it overwhelming and difficult to navigate.
- Some had watched the information videos on preparing for a conference/hearing and found them useful. Similarly, a short briefing received from the associate clerk on the day was helpful.
- Only a small number of users felt the Commission's written correspondence throughout this stage was clear and easy to comprehend.

### Preparing submissions and witness statements

- Only a small number of participants were aware of the submissions templates and had used them (noting there were some technical issues with links to the templates). The feedback was generally positive, but there was some frustration over repetition with the content in the forms (F2 and F3).
- Some self-represented users were confident about preparing their submissions and witness statements, while others assumed they needed to present the Commission with case law and detailed legal analysis.

# 5. Step-By-Step: Arbitration

## 2. Attend conference/hearing



### Key points

Users felt the conference/hearing was **confronting and stressful**.

Some users felt the Commission venue was **'cold'** and **'too official'**, adding to users' stress.

Overall, users felt Members were fair and **impartial**.

### Emotional experience

- Users generally felt the conference/hearing was highly confronting and stressful.
- Users explained they were taken aback by the process, finding it far more intense than they expected (e.g. cross examination). Several applicants and respondents said they felt attacked and "out-powered" by the opposing side, particularly legal representatives.

### Logistics and physical environment

- Users generally felt the hearing itself was run efficiently.
- Some users felt the Commission's physical surroundings were confronting. Some users reported the venue as "imposing", "too official", "serious" and "cold".
- Users who had watched the Commission's information videos felt more at ease in the hearing room compared to those who had not, commenting the videos helped them to know what to expect.
- Having to wait in the same area as the other party was confronting, particularly for applicants. A concierge for first-time users would be beneficial.

### Determinative conference or hearing?

- Users did not know the difference between a determinative conference and a hearing.
- Most thought the determinative conference format, with a Member playing an active role and a more inquisitorial tone, was preferable to having lawyers run the case or self-represented parties muddling through a hearing.

### Conduct of Members

- Users generally felt Members were impartial. However, some users described Member conduct as "aggressive", "intense" and "intimidating" (particularly when sitting at the bench). This added to users' fear and anxiety, as well as the formality of the process.
- Similar to the way users perceived conciliators, many looked for cues that indicated the Member was on their side or the other, not necessarily accepting that they remain impartial.
- Some users claimed they had only learned that a decision made by the Member would be published when they attended the hearing. This surprised some users, while encouraged other users to settle prior to hearing.

## 3. Post-conference/hearing



### Key points

The final stage of the user's journey is heavily **influenced by the outcome** of their matter.

The Notice of Outcome was **too cold**, formal and official.

### Outcome-based reactions

- User experience at this stage is heavily influenced by the outcome of the matter. Users who had settled the matter (with the assistance of the Commission) had compromised and conceded their original position, so could feel some dissatisfaction with the result, but relief that it had concluded.
- Some users who received a favourable outcome still expressed disappointment, including respondents who were disillusioned when the applicant withdrew on the eve of the hearing and they missed their opportunity to be heard by the Commission and found that they had acted appropriately.
- Users who received a decision in their favour did not necessarily feel vindicated, particularly respondents who felt the Commission's communication did not dispel the feeling they were being judged or that they had done something wrong.

### Decision

- Decisions were difficult for most users to understand (those with legal representatives could have the decision explained). The case law citations and extracts of the *Fair Work Act 2009* (Cth) made the document long and technical.
- Key frustrations occurred where users felt the other side had lied or misrepresented things which was then accepted by the Member.

## 3. Post-conference/hearing (cont.)



### Key points

The final stage of the user's journey is heavily **influenced by the outcome** of their matter.

The Notice of Outcome was **too cold**, formal and official.

### Matter closure and 'next steps'

- Users critiqued that while the notice of outcome itself was thought to meet user needs reasonably well, it did not make clear the matter was concluded or that it could be re-commenced. Some users explained that this made them feel they were “in limbo”. Additionally, users viewed the notice as formal, cold and official. This was considered appropriate, though users flagged that a warmer closure may have left them feeling more satisfied with the experience.
- Many users described a perceived absence of guidance and explanation of next steps. Users reported feeling as if the Commission considered their experience over once the hearing finished. However, users suggested their negative experiences endured owing to ongoing concerns about what could happen next, as well as the “mental load” of processing the experience itself.
- Users wondered “can the decision be appealed?” and “what can I do if I learn that the respondent is not complying with non-disparagement clause?”.
- Applicants were unsure how to have their order/monetary settlement enforced. Some were frustrated that they have to pursue enforcement of the monetary settlement further to access payments from the respondent.
- Respondents generally reflected on questions such as “how do I avoid this happening again?”.
- Users reported a long, anxious wait for the decision. Some users made several inquiries about when the decision would be handed down.
- A process of fortnightly or monthly updates would be beneficial and an alert (e.g. SMS, email) prior to publication could ease this anxiety and help users prepare (for an unfavourable outcome).

## Recommendations



Some suggestions for improvement during the arbitration stage of the unfair dismissal process were provided by users, staff and identified by Cube Group.

Index	Arbitration Recommendations
AR1	Ensure users understand that Member decisions in most circumstances will be published on the Commission's website along with the parties' names. This could ensure there are no surprises.
AR2	Consider making past decisions more accessible by introducing “case studies”. This could allow users, particularly self-represented parties, to better navigate the depth and breadth of employment relations case law.
AR3	Introduce case management and a single point of contact at the onset of arbitration (or at the beginning of the unfair dismissal process). The point of contact (i.e. case manager) could confirm receipt of submissions and check the materials submitted for quality assurance. This would be particularly beneficial for self-represented users, and would save time later in the process.
AR4	Provide more information about various types of events (e.g. conference/hearing/procedural-type events and discussions), their purpose and how long they will take to allow users an opportunity to appropriately prepare. Allow users to opt-out of settlement discussions, or hold these discussions at the request of the parties rather than the initiative of the Commission.
AR5	Provide users with information on logistics, including how to get to the Commission, travel time, and parking information. Provide a “hearing induction” that could include the instructional videos. This could help ease some stress in the lead up to the hearing. An in-person induction for first-time users could also be beneficial.
AR6	Consider modifying the submission templates so that it avoids duplication with information on other forms (i.e. F2 and F3 forms) and ensure that only new content is provided. This would help users better prepare submissions. Sample witness statements could also be beneficial for self-represented users.
AR7	Provide relevant resources or information to guide users with closing the unfair dismissal process. This would assist users identify possible next steps. Similar to the conciliation process, it would be beneficial for the case manager to remain accessible to parties until settlement has been executed. This would be particularly beneficial for self-represented users.



## 6. Validating, Monitoring & Evaluation



## What success looks like



The benefits of proactive case management practices, improved communication and better access to information resources identified in this Report should be tested, verified and monitored over time.

### Validating and monitoring improvement opportunities

Validating qualitative insights from this research, monitoring the effectiveness of changes, and evaluating the outcomes will form an important part of the Commission's continuous improvement efforts.

The Commission should further test recommendations outlined in this Report through, for example:

- Engaging users through workshops, focus groups and surveys on specific reforms
- Tracing the end-to-end costs for both users and the Commission, supported by appropriate process mapping
- Establishing baseline data for each touch point throughout the unfair dismissal process
- Identifying metrics to track and monitor benefits (i.e. actual and elapsed time, compliance with directions, avoidance of unnecessary touchpoints, or qualitative measures relating to satisfaction or perceived ease of use)
- Identifying and cataloguing good practice for written communication and supporting materials.

### Measuring user experience

By tracking user satisfaction, the Commission can better understand how particular touch points are causing problems, and what an effective response may be. Understanding what users most value will be critical, given that small changes can deliver large increases in satisfaction (and potentially, efficiency).

The Commission should collect baseline data and undertake qualitative and quantitative research across a range of indicators when designing and monitoring changes to the unfair dismissal process. This could include, for example:

- User attitudes (e.g. satisfaction, perceived ease of use) at each touch point, as well as towards the unfair dismissal process more broadly
- Level of user engagement on Commission's website (e.g. average time spent, number of clicks, number of downloads, etc.)
- Time costs (e.g. filling out forms, research, preparing submissions, attending proceedings, etc.)
- Actual costs (e.g. legal and ancillary expenses, travel costs, etc.).

## Case Studies



Cube collected and analysed numerous accounts of users' experiences throughout the unfair dismissal process.

The following case studies reflect common 'pain points' experienced by users at each step of the unfair dismissal process:

- F2 application form
- F3 response form
- The purpose of conciliation
- The Commission's offices
- Deed of Release

### Case Study 1 F2 application form

Users explored the F2 application form in great detail. There were mixed views on the tone, layout and information contained on the F2 application form.

Some users found the layout and instructions straightforward and simple, and the online submission convenient and efficient.

However, other users felt there was too much information contained on the forms, and the instructions were unclear. Users felt the wording of the F2 application form was 'too legal'. The tone and wording of the F2 application form created feelings of anxiety in some applicants, who reported feeling 'scared to get it wrong'.

One user, who was seeking reinstatement, expressed that she didn't realise you could simply write 'I want my job back'. Another user cited the form as too long, with information at the front-end 'overwhelming'.

### Case Study 2 F3 response form

Users reported feeling frustrated, annoyed and anxious when completing the F3 response form.

Some users found it difficult completing the F3 response form because of insufficient information and explanation provided in the applicant's F2 application form. This caused stress and anxiety for some users, who felt that they 'had no idea what you are defending'.

For this reason, some users could not provide full answers to questions on the F3 response form. This led to fears that the Commission 'would think you're not cooperating', further fueling users' frustration and anxiety with the process.

Equally, some users found it difficult interpreting lengthy and 'long-winded' applications and whether and how to respond to off-topic claims.

## Case Study 3 The purpose of conciliation

In many instances, the purpose of conciliation was unclear, which led to users feeling frustrated and confused before, during and immediately after the conciliation phone call.

A common theme from discussions with both respondents and applicants was the perception that conciliators just wanted to 'talk about money'.

Respondents and applicants both were expecting to discuss the merits of the matter, but were disappointed when discussions quickly transitioned to payment.

Some respondents felt conciliators were only interested in getting them to pay applicants 'to make it go away'. Similarly, some applicants felt that the conciliators were 'pushing for settlement' and felt pressured and confused about their options and what was the best possible outcome.

## Case Study 4 The Commission's offices

For many users, the hearing is the first face-to-face interaction with Commission staff and members. Some users found the physical surroundings and the first face-to-face interaction stressful and confronting for two reasons.

First, travelling to the venue and finding parking was reported as difficult and added to users' stress.

Second, arriving at the venue, users reported that it felt 'imposing', 'too official', 'serious' and 'cold'. Users cited that this contributed to nervousness, anxiety and stress.

Users who had watched the Commission's information videos felt more at ease in the hearing room, compared to those who had not watched the videos. Users suggested the videos helped them 'to know what to expect' at hearing.

## Case Study 5 Deed of Release

Users who drafted and signed a Deed of Release following settlement reported feeling frustrated and angry, for two main reasons.

First, difficulties in either drafting or signing the Deed of Release meant further delays and the process 'drags on'. One user reported an additional seven weeks after conciliation to execute the Deed of Release.

Second, some users felt there was limited guidance from the Commission immediately after settlement. Some users, especially users who were self-represented, reported that information to help guide executing a Deed of Release is difficult to find on the Commission website. One user cited there was 'no assistance from the Commission' from the point of settlement.

## Four-Phase Program

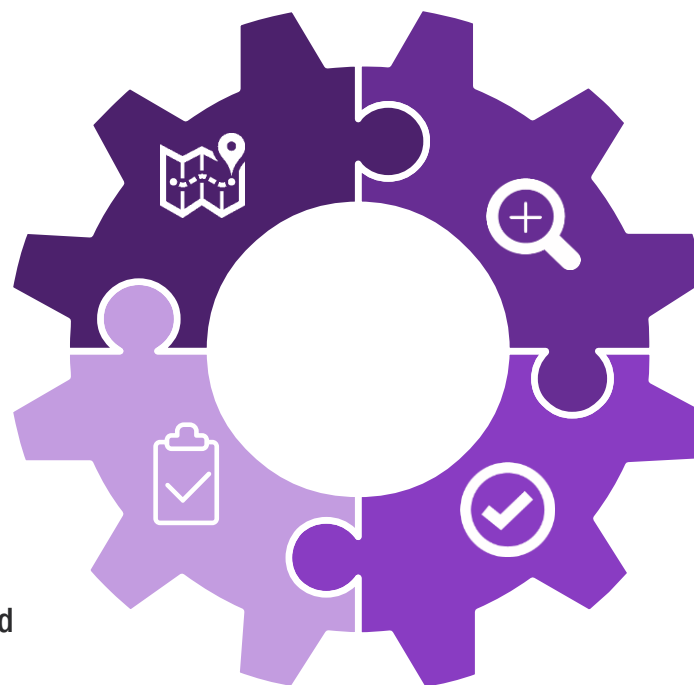
Cube Group designed a four-phase program of workshops, with each capturing different types of information to support varying levels of analysis.

### 1. High-level Mapping

Create user-generated maps of the end-to-end unfair dismissal process, focussing on the 'experience' and identifying 'pain points' and 'gain points'.

### 4. Gap Mapping

Conduct Conciliator and Member workshops to address gaps in analysis and understand the drivers and benefits of existing practices.



### 2. Detailed Mapping

Investigate the actions and thoughts of users, and diagnose the root cause of 'pain points' through an exploration of each major step.

### 3. Generating Solutions

Generate possible solutions to common 'pain points' and how to optimise 'gain points' more widely for each major step in the process.

## User Profile

The Commission consulted with a range of users, Members and Conciliators across different states. Some of the major demographic details of users are summarised below.

### Applicants

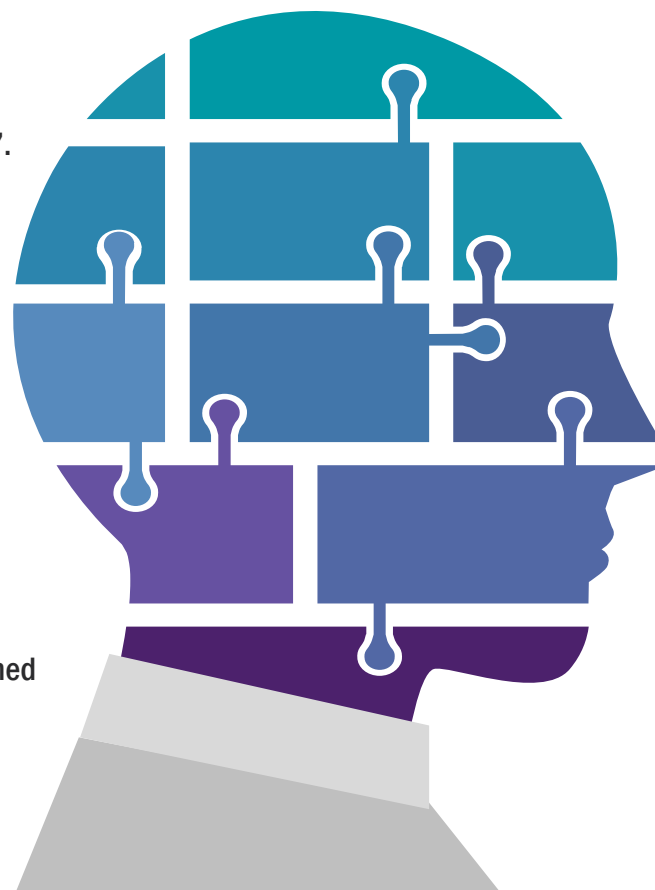
The Commission consulted with 'employees'. Most were first-time/one-time users with proficiency in written and spoken English.

### Small-medium sized Respondents

Business owners and senior managers from businesses with 1-50 employees. Many were first-time/one-time users.

### Members and Conciliators

Interim findings from client experience workshops were delivered to Members and Conciliators and further insights were obtained from these groups.



### Various stages

Users had experienced various stages of the unfair dismissal process. Most had experienced conciliation, some resolved and some progressed to have their matter heard by a Member.

### Various outcomes

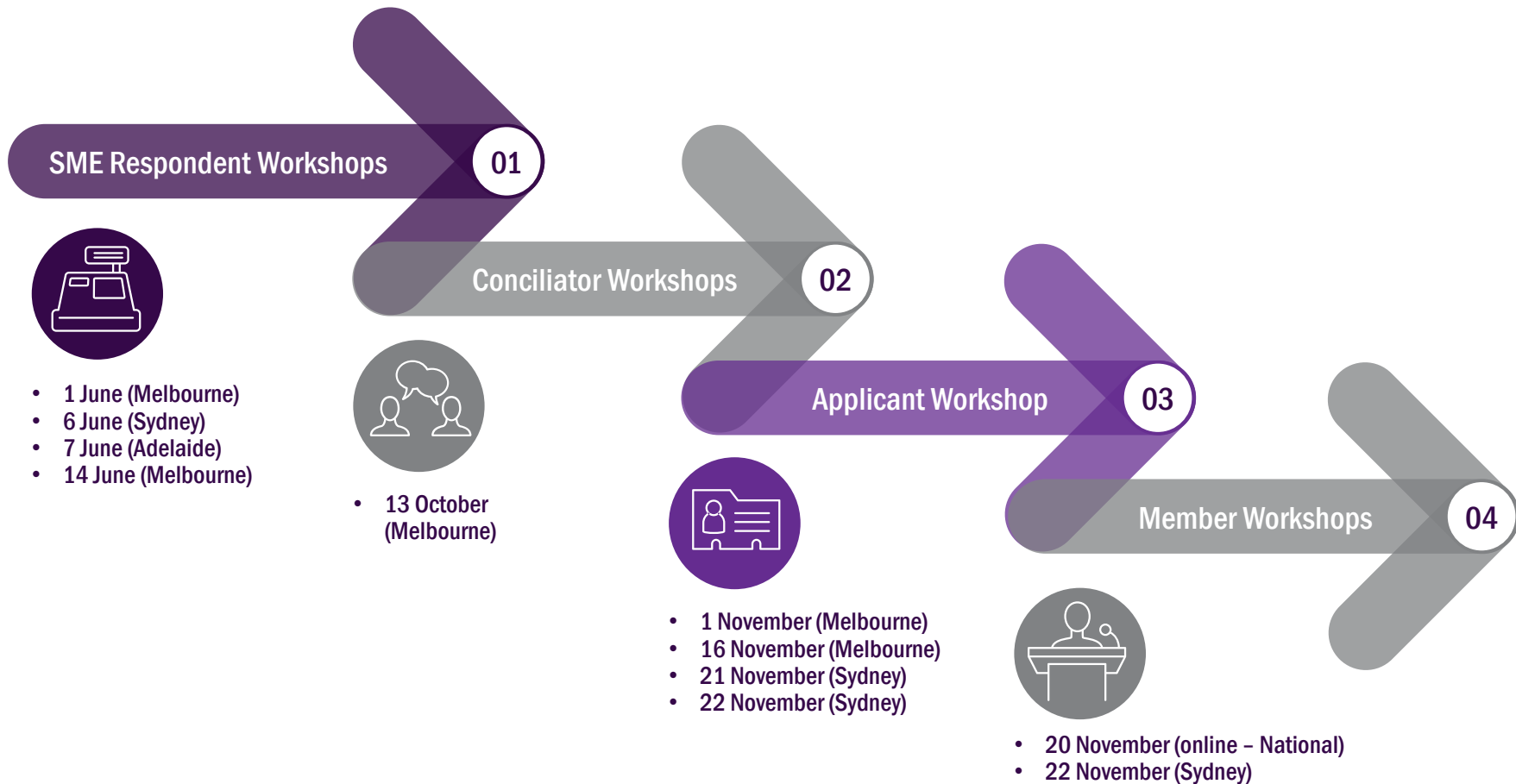
Users with favourable and unfavourable outcomes, conciliated agreements and decisions of the Commission.

### Various degrees of representation

Some users were self-represented, some sought/received legal advice, some were represented throughout the process and some were represented at different stages.

## Conduct Workshops

Cube Group facilitated a series of user experience workshops across all user groups between June–November 2017 in Melbourne, Sydney and Adelaide.



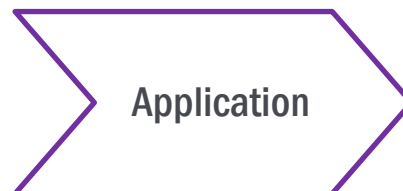
## Journey map



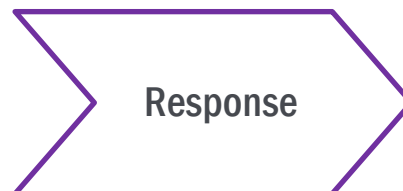
Journey mapping is the analysis of a users' journey throughout a defined process.

Users were provided with a high-level summary of the unfair dismissal process to help structure their reflective thinking (see right).

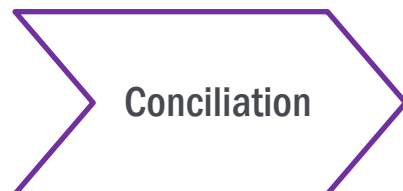
Workshops explored each step in detail, identifying sub-steps and capturing users' actions, thoughts, feelings and ideas for improvement.



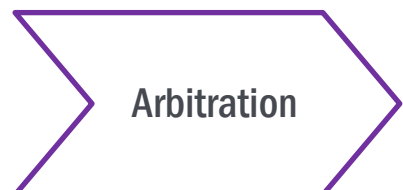
This is the first touch-point in the process for applicants. It includes the process of researching unfair dismissal and the Commission, seeking legal advice and completing an unfair dismissal application.



This is the first touch-point in the process for respondents. It includes receiving notification/being served, researching unfair dismissal and the Commission and responding (completing a response form).



This is a significant engagement activity in the unfair dismissal process between users and conciliators. This step includes preparation for conciliation, conciliation itself and post-conciliation. The matter may be resolved at this point.



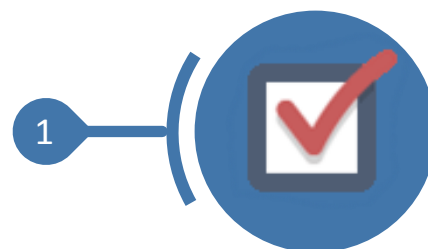
This step includes receiving directions from the Commission for filing submissions and attending an arbitration hearing/conference (i.e. for many having their first in-person experience). It also encompasses preparation of submissions and for the hearing/conference and post-hearing steps. In some states/circumstances, it also includes attending pre-hearing events. It may include applying for and responding in relation to interlocutory decisions.

## Journey map



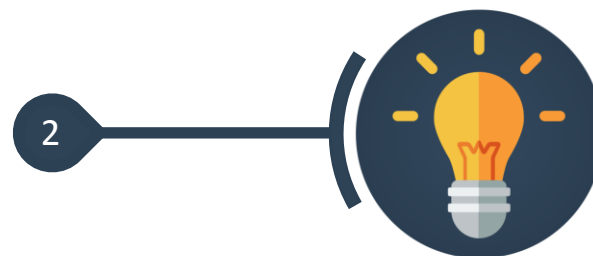
To capture detailed information about each of the primary steps outlined in the previous slide, Cube Group facilitated discussion for each step that focused on four major factors: tasks, thoughts, feelings and ideas.

Cube explored each factor in-depth in order to collect data for a root cause analysis of 'pain points'.



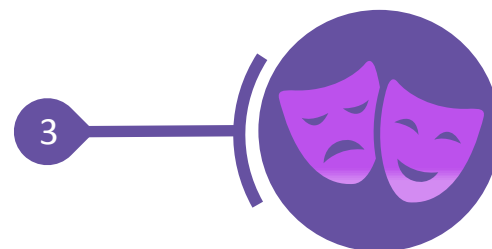
### Tasks/Actions

What are the key activities users undertake in each step? The level of detail varied, but was as granular as 'explore the Commission website' or 'open email, review email, review application.. etc.'



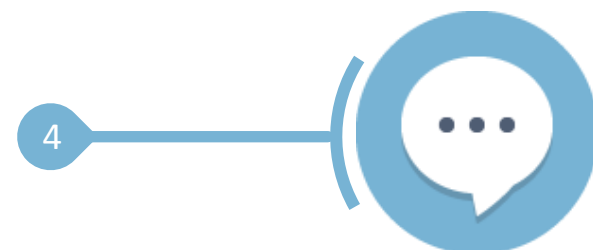
### Thoughts

'What did you think when you did this step?' Users shared the questions, comments and self-talk they experienced in each step and sub-step.



### Feelings

'What was your reaction to that?' Users share their emotional reaction to different elements of the Commission's service. This helps identify common 'pain points'.



### Suggestions

'How could the Commission ensure you don't have that experience again?' Users suggest mechanisms for mitigating or eliminating 'pain points'.



## Data capture

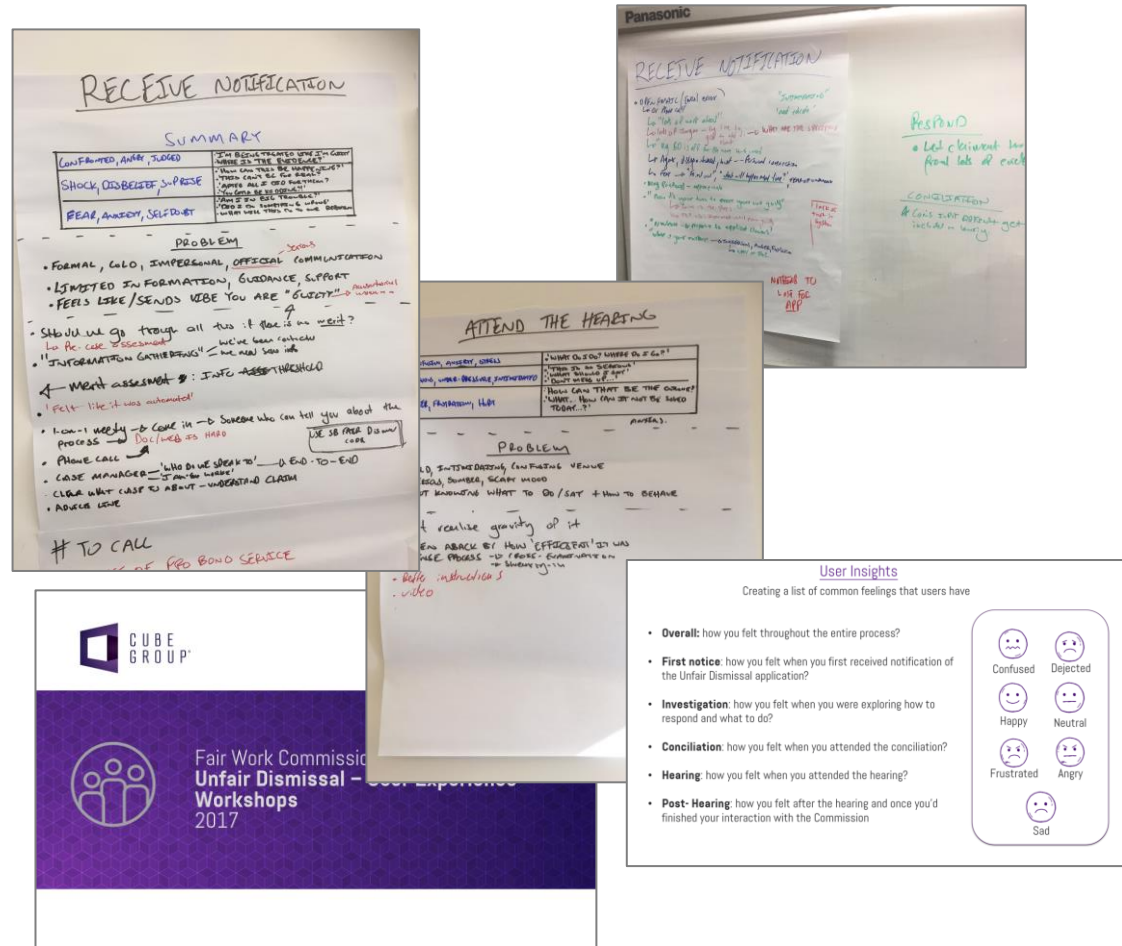


Each session drew on two methods of capture.

First, Cube documented group discussion as the session progressed on A3 sheets. These sheets were used to capture key insights into user tasks, thoughts, feelings and suggestions.

Second, each session had at least one designated note-taker, who documented the same themes captured on the A3 sheets, but in greater detail.

The note-taker captured details about the users' stories which has been used to inform short case studies and detail about 'pain points' that enable root cause analysis.



## Contact us

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