



## About the F9A application form

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### Employer's response to application for the Commission to deal with an unlawful termination dispute

#### About unlawful termination

Certain employees (see below) may make an application to the Fair Work Commission (Commission) to deal with a dispute under the unlawful termination provisions of the [Fair Work Act 2009](#).

The unlawful termination provisions make it unlawful for an employer to terminate an employee's employment for one or more unlawful reasons (for example, disability, temporary absence from work because of illness, trade union membership, etc.).

Unlawful termination applications can be made by:

- employees who are not in the national system, or
- national system employees who are not entitled to make a general protections application (see, for example, *McIntyre v Special Broadcasting Services Corporation T/A SBS Corporation* [2015] FWC 6768), or
- industrial associations entitled to represent the industrial interests of such employees.

There are provisions in the *Fair Work Act 2009* that are designed to prevent multiple claims being lodged for the same dismissal (see subdivision B of Division 3, Part 6-1). For more information about the different types of dismissal claims, see [Termination of employment](#) on the Commission's website.

Once an employee alleges that his or her employment was terminated by the employer for an unlawful reason, it is presumed that the employee's employment was terminated for that reason unless the employer can prove otherwise.

The Commission will try to assist the parties to resolve the dispute by mediation or conciliation. If the Commission is satisfied that all reasonable attempts to resolve the dispute are likely to be unsuccessful, a certificate will be issued (s.776). Once the certificate is issued, the parties can notify the Commission using the Form F9B if they agree to the dispute being arbitrated (s.777). Alternatively, the Applicant can make an application to a court to deal with the matter (s.778). For more information about unlawful terminations and eligibility to make an application, please see the Commission's [unlawful termination guide](#).

#### Who can use this form

Use this form if you are an employer or are responding for an employer and the Commission has served the employer with an application for the Commission to deal with an unlawful termination dispute (Form F9).

If the employer has been served with two or more Form F9 applications concerning the same or substantially similar circumstances, you can lodge one response for all of the applications if the employer's response is substantially the same for each application. If necessary, you can attach

details of each individual applicant to whom your response relates (including name, date of commencement and entitlements) in a separate sheet.

## Lodgment and service of your completed form

1. **Lodge this response form and any supporting documents** with the Commission within **7 calendar days** after the employer was served with the Form F9 application. You can lodge this form through by post, fax or email, or in person at the [Commission's office](#) in your state or territory.
2. **Serve a copy of your response and any supporting documents** on the Applicant within **7 calendar days** after the employer was served with the Form F9 application. You can serve this response and supporting documents on the Applicant in a number of ways, including by email, express or registered post. Make sure you send the documents to the email or postal address specified in the Form F9 application.

## Where to get help

### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au) also contains a range of information that may assist.

### Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

### Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or employee of an employer organisation) speaks or acts on a party's behalf, or assists the party in certain other ways in relation to a matter. There is no requirement to be represented at the Commission.

You will need permission from the Commission Member dealing with your matter if you wish to be represented by a lawyer or paid agent at a conference or a hearing, unless the lawyer or paid agent is one of your employees or officers, or an employee or officer of an employer organisation, an association of employers or a peak council that is representing you. If you want to seek permission, you must lodge a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for lawyer or paid agent to participate in a conference or hearing.

You do not need permission to have a lawyer or paid agent prepare and lodge this form with the Commission.

For more information about representation by lawyers and paid agents, see section 596 of the Fair Work Act 2009, rules 11, 12 and 12A of the Fair Work Commission Rules 2013 and the Commission's [practice note on representation by lawyers and paid agents](#).

## Glossary of common terms

**Applicant** – This is the person or organisation that is making an application.

**Jurisdictional objection** – This is a type of objection a Respondent can raise to an application. A Respondent can make this kind of objection if they think that the Commission, for a technical or legal reason, cannot hear the matter.

**Lawyer** – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

**Paid agent** – in relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**Party** – A party is an Applicant, Respondent, or another person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** – The person or organisation responding to an application made by an Applicant.

**Service** – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 deal with service.

## Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with the unlawful termination dispute application. The information will be included on the case file, and the Commission may disclose the information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



**Remove this cover sheet** and keep it for future reference – it contains useful information.

# Form F9A – Employer’s response to application for the Commission to deal with an unlawful termination dispute

Fair Work Commission Rules 2013, Rules 22, 23 and 46

This is a response to an application for the Fair Work Commission (the Commission) to deal with an unlawful termination dispute under Part 6-4 of the [Fair Work Act 2009](#).

## The Applicant



These are the details of the person who made the application. You can find this information on the application for the Commission to deal with an unlawful termination dispute Form F9.

<b>Name</b>	
<b>Commission matter number</b>	

## The Respondent (the employer)



These are the details of the employer responding to the application.

<b>Legal name of employer</b>			
<b>Employer’s ACN (if a company)</b>			
<b>Trading name or registered business name</b>			
<b>ABN</b>			
<b>Contact person</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			
<b>What industry is the employer in?</b>			

**Has the Applicant given the correct legal name of the employer in their application for the Commission to deal with an unlawful termination dispute (Form F9)?**

Yes

No

**How would the employer prefer us to send communications?**

Email (you will need to make sure you check your email account regularly)

Post

**Does the employer need an interpreter?**



If the employer has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

Yes – Specify language

No

**Does the employer require any special assistance at the hearing or conference (eg a hearing loop)?**

Yes – Please specify the assistance required

No

**Does the employer have a representative?**



A representative is a person or organisation who is representing the employer. This might be a lawyer or paid agent, an employer association or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

**Employer's representative**



These are the details of the person or organisation who is representing the employer (if any).

<b>Name of person</b>	
<b>Firm, employer organisation or company</b>	
<b>Postal address</b>	

<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

**Is the employer's representative a lawyer or paid agent?**

Yes

No

## 1. Termination of employment

**1.1 What date did the employer notify the Applicant of the termination of their employment?**

**1.2 What date did the termination take effect?**

## 2. Objections

**2.1 Does the employer have any jurisdictional or other objections to the application?**



Jurisdictional objections relate to why an employee is not eligible to make an application to the Commission. An objection is not simply that you think that the employee's termination was lawful. See the Commission's [unlawful termination guide](#) for more information.

Yes

No

If you answered **Yes** – On what basis does the employer object? If the employer objects on multiple grounds you can select more than one from the list below:

The application is out of time (ie lodged more than 21 days after the termination took effect)

The Applicant is entitled to make a general protections court application

The Applicant has made another application or complaint about the termination of his or her employment (such as, an unfair dismissal application or complaint to the Australian Human Rights Commission)

Other

Explain why the employer objects on these grounds. Attach extra pages if necessary.

### 3. Alleged contraventions

#### 3.1 Does the employer agree with the information given in question 3 on the Applicant's Form F9?



Section 772 of the [Fair Work Act 2009](#) sets out a list of unlawful reasons for terminating an employee's employment.

Yes

No

If you answered **No** – On what basis does the employer disagree?

The Applicant's employment was not terminated for an unlawful reason

The Applicant's employment was terminated for a reason based on the inherent requirements of the particular position concerned

The Applicant was a member of staff of an institution that is conducted in accordance with doctrines, tenets, beliefs or teachings of a particular religion or creed and was terminated in good faith and to avoid injury to the religious susceptibilities of adherents of that religion or creed

Other

Explain why the employer disagrees. Attach extra pages if necessary.

#### 4. Remedy

4.1 Does the employer agree with the remedy the Applicant is seeking?

Yes

No

If you answered **No** – Explain why. Attach extra pages if necessary.



### **Disclosure of information**

The Commission will provide a copy of this response and any attachments to the other parties in this matter. This includes:

- the Applicant
- any legal representatives.

### **Consent to contact by researchers**

The Commission undertakes research with participants in unlawful termination matters to ensure a high quality process. Some research may be undertaken by external providers on behalf of the Commission.

Do you consent to the contact details provided on page 1 of this form being provided to an external provider of research services for the sole purpose of inviting you to participate in this research?

Yes

No

## Signature



If you are completing this form electronically and you do not have an electronic signature, it is sufficient to type your name in the signature field. You must still complete all the fields below.

<b>Signature</b>	
<b>Name</b>	
<b>Capacity/ Position</b>	
<b>Date</b>	



If you are not the employer and are completing and signing this form on the employer's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**