# Applicant’s Outline of arguments: merits

Your application has been listed for a conference. In order for you to prepare for the conference, you have received requirements directing you to complete and lodge:

* An **Outline of argument: merits** (this document)
* A **Statement of evidence**
* A **Document list**, and
* If the respondent has made an objection, an **Outline of argument: objections**.

Each of the documents that you complete must contain information that you can prove to be true. Ensure that you include all the issues and concerns that you wish to raise in relation to your unfair dismissal application. The information you provide will be relied on by the respondent (the employer) and the Commission Member at the conference. You cannot keep information secret to surprise the respondent or the Commission Member on the day of the conference or hearing.

The respondent (the employer) has also been directed to complete and lodge documents in response to your claim. Both your material and the respondent's material will be discussed at the conference.

### What is an Outline of argument: merits?

An **Outline of argument: merits** is a summary of the facts that are relevant to the Commission Member in deciding whether you have been unfairly dismissed.

The **Outline of argument: merits** will help you answer the questions that the Commission Member will have about your claim.

If the respondent (the employer) has raised an objection to your application, you will also need to complete the **Outline of argument: objections**.

### What to do with your completed documents?

Once all your documents are completed, make sure you send a copy to both the Commission and the respondent (the employer) by the date and time that is noted in the requirements as set out by the Commission. The documents should be sent to:

1. The postal or email address of the respondent as set out in their F3—Employer's response to unfair dismissal application, and
2. The postal or email address of the chambers of the Commission Member as set out in the requirements.

On the day of the conference, make sure you bring a copy of all the material that has been lodged by you and the respondent (the employer).

### Matter details

|  |  |
| --- | --- |
| **Matter number** (e.g. U2015/12345) |  |
| **Applicant** (you, employee) |  |
| **Applicant’s representative** (if any) |  |
| **Respondent** (the employer) |  |
| **Respondent’s representative** (if any) |  |
| **Date of conference or hearing** |  |

### 1. Your employment

1a. When did you start working for the respondent (your employer)?

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1b. What was your job title?

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1c. Were you full-time, part-time or casual?

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1d. What hours did you work?
 (E.g. 38 hours per week, 20 hours per fortnight, variable hours)

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*Now go to question 2*

### 2. Your pay

2a. How much were you paid per hour or week?
 (E.g. 18 per hour, $650 per week)

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2b. Did your earnings vary throughout the year?

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| --- | --- |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—How much did you earn over the last: |
|  | 6 months? |  |
|  |  |  |
|  | 12 months? |  |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—What was your annual income? |
|  |  |

2c. Were you receiving a remuneration package?
 (E.g. A package that included a car, a phone, superannuation, etc.?)

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| --- | --- |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Go to question 3 |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—Provide details of the package |
|  |  |

 *Now go to question 3*

### 3. Your dismissal

3a. What date were you notified of your dismissal?

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3b. What date did the dismissal take effect?

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| --- |
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3c. What reason(s) were you given for the dismissal?

[ ]  Misconduct or serious misconduct—Go to question 4

[ ]  Poor work performance—Go to question 5

[ ]  No reason given—Go to question 6

[ ]  Other—Describe the reason below, then go to question 6

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### 4. Dismissed for misconduct or serious misconduct

4a. What was the alleged misconduct?

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4b. When was the misconduct alleged to have occurred?

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4c. Do you agree that the misconduct occurred?
 (I.e. Did you do what the employer said you did?)

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| --- | --- |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—Go to question 4d. |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Explain why you don’t agree. Describe what you think actually happened, then go to question 4d. |
|  |  |

4d. Describe any circumstances surrounding the alleged misconduct that you think the Commission should take into account.

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4e. Was anyone else present at the time of the alleged misconduct who may have seen or heard what happened?

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| --- | --- |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Go to question 4f |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—List who saw what happened. Describe the circumstances. Then go to question 4f. |
|  |  |

4f. Did your employer meet with you or talk to you about the alleged misconduct?

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| --- | --- |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—Describe the meeting and/or discussions, then go to question 6. Include information on when this occurred, what the employer said, how you reacted, etc. |
|  |  |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Describe the circumstances, then go to question 6. Why do you think your employer didn’t meet with you or talk to you about the alleged misconduct? |
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### 5. Dismissed for poor work performance

5a. What performance issues did your employer give for dismissing you?

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5b. Do you agree with the issues raised by your employer about your performance?

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| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—Go to question 5c |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Explain why you don’t agree |
|  |  |

5c. Where there any circumstances surrounding the performance issues that you think the Commission should take into account?

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5d. Were you informed (either verbally or in writing) about the performance issues?

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| --- | --- |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Go to question 5e |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—Describe how you were informed and what you were told |
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5e. Were you given time to improve your performance?

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| --- | --- |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Go to question 5f |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—Describe how much time was given and what happened during that time |
|  |  |

5f. Were you offered any training or other assistance to improve your performance?

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| --- | --- |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Go to question 6 |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—Describe the training or assistance, then go to question 6 |
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### 6. Your dismissal

6a. Were you given an opportunity to respond to the reason(s) you were given for the dismissal?

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| --- | --- |
| N:\_Member Support Team\UD materials\Images\no.jpg | **No**—Go to question 6b |
| **N:\_Member Support Team\UD materials\Images\yes.jpg** | **Yes**—Describe your response to the employer’s reason(s) |
|  |  |

6b. Did you ask to have a support person present at any discussion relating to your dismissal?

[ ]  No, I didn’t ask to have a support person—Go to question 6d

[ ]  Yes, I asked to have a support person present—Go to question 6c

6c. Was your request for a support person granted or refused?

[ ]  Granted

[ ]  Refused

6d. Why do you think the dismissal was unfair?

Describe why you think your dismissal was ‘harsh, unjust or unreasonable’. The criteria for considering ‘harshness’ can be found at section 387 of the Fair Work Act. Your answer should be supported by facts.

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Now go to question 7

### 7. Remedy

7a. If the Commission finds that your dismissal was unfair, what remedy (outcome) are you seeking?
(E.g. Do you want your job back? Do you want financial compensation? etc.)

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7b. If you do not want to be reinstated (i.e. if you don’t want your job back) explain why not.

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7c. If you are seeking financial compensation, how much do you want and why?

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7d. What attempts have you made to find another job since you were dismissed?
(E.g. What jobs have you applied for? What interviews have you had? etc.)

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7e. Have you found any other work since you were dismissed?

[ ]  No

[ ]  Yes

**If you answered yes to question 7e:** Bring the details of your new job with you to the conference including details of how much you have earned between when the dismissal took effect and the date of the conference. The Commission Member may need to ask you about your new position, such as when you started and your new pay.

7f. Has the respondent (the employer) made an objection to your unfair dismissal application?

The employer can raise an objection in their Form F3—Employer's Response to Application for Unfair Dismissal Remedy, or separately in a Form F4—Objection to Application for Unfair Dismissal Remedy. Check these forms for an objection.

[ ]  No—This is the end of the **Outline of argument: merits.**

[ ]  Yes—Complete the **Outline of argument: objections**

### Legal advice

The Commission cannot provide legal advice.

As part of the unfair dismissal application process, parties may choose to obtain their own independent legal advice.

There are community legal centres in each state and territory. Community Legal Centres Australia legal help page ([clcs.org.au/index.php/findlegalhelp](https://clcs.org.au/index.php/findlegalhelp)) can assist with finding the nearest community legal centre. Please note that Community Legal Centres Australia does not itself offer legal advice.

### Further information

For eligibility information, refer to the Unfair dismissal—Am I eligible to apply? page on the Commission's website ([www.fwc.gov.au/unfair-dismissal-eligibility-quiz](http://www.fwc.gov.au/unfair-dismissal-eligibility-quiz)).

You can also refer to the full set of unfair dismissal guides available on the Unfair dismissal page ([www.fwc.gov.au/job-loss-or-dismissal/unfair-dismissal](http://www.fwc.gov.au/job-loss-or-dismissal/unfair-dismissal)) of our website.

1. Overview of the unfair dismissal laws

2. Flowchart on the process

3. Making an application

4. Responding to an application

5. Objecting to an application

6. Preparing for conciliation

7. Preparing for a conference or hearing

8. Frequently asked questions

9. Glossary of common terms

The Unfair Dismissals Benchbook can also assist parties lodging or responding to unfair dismissal applications ([www.fwc.gov.au/benchbook/unfair-dismissals-benchbook](http://www.fwc.gov.au/benchbook/unfair-dismissals-benchbook)).

If you require further information or help, please refer to the Contact us page on the Commission's website ([www.fwc.gov.au/about-us/contact-us](http://www.fwc.gov.au/about-us/contact-us)).

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This guide is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.