General protections – Guide 4B

Conference before a Commission Member (all general protections disputes)

Overview
This guide explains how the Fair Work Commission deals with general protections applications through the conference process. It provides information about how to prepare for a conference before a Commission Member, what to bring, who can attend, and what happens if the matter is not resolved.

There are two types of general protections application that the Commission can deal with:
- a dismissal dispute, and
- a non-dismissal dispute.

Note: if your conference is before a staff conciliator you will find the relevant information in our general protections Guide 4A: Initial conference with a staff conciliator (dismissal disputes only).

What happens when a general protections application is lodged?
General protections matters are first dealt with in a private conference at the Commission.

In general protections dismissal disputes, both parties must attend the conference.

In general protections non-dismissal disputes, the Commission will only hold a private conference to deal with the dispute if both parties agree to attend. If one of the parties to a non-dismissal dispute does not agree to participate in a conference, or if the dispute remains unresolved after the conference, the employee can choose to make an application to the Federal Court or the Federal Circuit Court to deal with the matter.

During a conference, a Commission Member will work with those involved to reach an agreed resolution to the dispute. The Commission Member may make a recommendation or express an opinion during the conference, but cannot make a binding final decision or an order.

Preparing for a conference
After an application is lodged, the parties will receive a notification of when the application will be dealt with by a Commission Member. This notification is called a notice of listing. It contains the details about the time, date and location of the conference.

Conferences for general protections matters are usually private, and can be held face-to-face or by telephone.

You should bring all documents relevant to the application to the conference. These may include copies of pay slips, correspondence (including emails, letters and text messages), and extracts of the relevant workplace law, award or enterprise agreement.

For more information see the General Protections Benchbook regarding the powers of the Commission (www.fwc.gov.au/general-protections-benchbook/power-to-dismiss-applications).
Can someone represent me?

Many parties choose to represent themselves in Commission proceedings. It is not necessary for a party before the Commission to be represented by a lawyer or paid agent. You must seek permission to be represented by a lawyer or paid agent in a conference before the Commission, unless the representative is an employee or officer of:

- your business, or
- a union, employer organisation or peak council that you are a member of.

Requests for representation will generally be dealt with by the Commission Member at the start of the conference. Parties seeking to be represented in a conference should not assume that permission will be granted.

Parties should be prepared to proceed with a conference in the event that their representative is not permitted to appear. In the event that permission to be represented by a lawyer or paid agent is not granted the party may seek an adjournment, but whether an adjournment is granted will be a matter for the Commission Member concerned.

Subject to a direction by the Commission to the contrary, you don’t need to seek permission to have a lawyer or paid agent help you to prepare or lodge your application, response or submissions, or to correspond with the Commission.


Can I bring someone to support me?

Yes. You may be able to bring one or more individuals with you for support. However, in a private conference, you should be prepared to tell the Commission Member dealing with your case why you would like these individuals to be present.

Finding your way to a conference

On the day of the conference, you should check the hearings and conferences list for information about where you should go.

The list identifies all of the cases for a particular day and the Members dealing with them, the times of the hearings and conferences and the location (the floor and the room number).

The list is available on the Commission’s mobile friendly website up to a week in advance, and the locations are available from 4 pm the day before. Printed copies are available at Commission public counters, which are generally located near the hearing rooms or, in some premises, on the building’s ground floor. If your conference is in a regional courthouse you may need to ask for information at the enquiry counter.

What if the matter is not resolved after a conference?

General protections dismissal dispute applications

If a general protections dismissal dispute is not resolved during the conference, and the Commission is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful, then the Commission will issue the parties a certificate.
A certificate is a Commission document which states:

- the parties to the dispute
- that the Commission conducted a conference, and
- that the dispute could not be resolved by that process.

If the Commission considers that consent arbitration or an application to a court would not have a reasonable prospect of success, it must advise the parties accordingly.

If the parties to the dispute agree, the Commission can arbitrate their dispute. The applicant needs to notify the Commission that the parties consent to the arbitration within 14 days after the day the Commission issued the certificate. For information about the arbitration process, and how to notify the Commission that the parties consent to arbitration, see Guide 5 – The consent arbitration process.

If one or both of the parties don't consent to the Commission arbitrating the dispute, the employee can choose to progress the matter by making a separate application to a court.
General protections non-dismissal dispute applications

If attempts to resolve a non-dismissal dispute are not successful, or if one or both of the parties
to a non-dismissal dismissal dispute doesn’t agree to participate in a conference, the employee
can choose to progress the matter by making a separate application to a court. If the
Commission considers that an application to either Court would not have a reasonable prospect
of success, it must advise the parties accordingly.

Note: an employee in a general protections matter involving action other than dismissal does
not need to have made an application to the Commission to make an application to the Federal
Court or the Federal Circuit Court.
Court applications

The Federal Circuit Court and the Federal Court have the power to enforce general protections laws.

In the event that a person is found to have breached a general protections law, these Courts have the power to:

- issue a fine (known as a pecuniary penalty)
- make an order for reinstatement
- make an order awarding compensation for loss
- grant an injunction or interim injunction
- award costs.

When making a decision about whether to award costs, one of the grounds the Court will consider is whether a party unreasonably refused to participate in a matter before the Commission.


Legal advice

The Commission cannot provide legal advice. The Commission is only able to provide general information about the application process.

There are community legal centres in each state and territory. The National Association of Community Legal Centres Inc (NACLC) legal help page (www.naclc.org.au/need_legal_help.php) can assist with finding the nearest community legal centre. Please note that the NACLC does not itself offer legal advice.

Further information


You can also refer to the full set of general protections guides on the Fair Work Commission’s website:

- Guide 1 – General protections overview
- Guide 2 – Making a general protections application
- Guide 3 – Responding to a general protections application
- Guide 4A – Initial conference with a staff conciliator (dismissal disputes only)
- Guide 4B – Conference before a Commission Member (all general protections disputes)
- Guide 5 – The consent arbitration process
- Guide 6 – General protections applications not resolved at the Commission
Guide 7 – Frequently asked questions
Guide 8 – Glossary of common terms.

The General Protections Benchbook can also assist parties lodging or responding to general protections applications (www.fwc.gov.au/resources/benchbooks/general-protections-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).

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This fact sheet 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.