General protections – Guide 2

Making a general protections application

Overview
This guide explains who can make a general protections application with the Fair Work Commission (the Commission). It also explains the steps a person needs to take when completing and lodging Form F8 – Application for the Commission to Deal with a General Protections Dispute.

Who is eligible to apply?
General protections laws apply to:
- employees and prospective employees
- employers and prospective employers
- independent contractors and prospective independent contractors
- a person (the principal) who has entered into or who has proposed to enter into a contract for services with an independent contractor
- an industrial association, including an officer or member of an industrial association.

General protections laws provide protection from a range of actions taken by, or that affect (or that could or are intended to affect, or are threatened to affect) constitutionally-covered entities, employers in the Australian Capital Territory or Northern Territory, or other trade or commerce employers. They also protect from actions taken in a Territory or a Commonwealth place.

See Guide 1 – General protections overview, for more information.

How long do I have to apply?
An application to deal with a general protections dismissal dispute must be lodged by the employee within 21 calendar days after the day the dismissal took effect.

The time period will only be extended if, after hearing formally from the parties, a Commission Member is satisfied that there were exceptional circumstances for not lodging the application on time.

The 21 calendar day time limit does not apply to general protections applications that do not involve a dismissal. Applications where the employee has not been dismissed can be lodged up to six years from the day the alleged contravention occurred.

For more information see the General Protections Benchbook regarding information about lodgment timeframes (www.fwc.gov.au/resources/benchbooks/general-protections-benchbook).
Do I need to have completed a minimum length of service to apply?

No. General protections apply from the start of an employment relationship and, in some cases, before the employment relationship starts. There is no qualifying period to be eligible to lodge a general protections application, and employees who are in a probationary period of employment are entitled to lodge an application. General protections laws also apply regardless of how much a person earns.

Which application form do I use?

To make an application, you need to complete Form F8 – Application for the Commission to Deal with a General Protections Dispute.


What should I include in an application?

Your application should set out, as relevant to your situation:

- the adverse action that was taken against you because you had, exercised or did not exercise, or proposed to exercise or not exercise a workplace right

- the adverse action that was taken against you because you engaged, proposed to engage or refused to participate in industrial activity

- the adverse action that was taken against you because of your race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction or social origin

- the action taken to coerce or threaten to coerce you into exercising or proposing to an exercise a workplace right, not exercising a workplace right, or exercising it in a particular way

- the action taken knowingly or recklessly to misrepresent your workplace rights, the exercise of those rights or the effect of exercising those rights

- the action taken to apply undue influence or pressure to you about agreeing to certain prescribed arrangements, such as a deduction from your pay or a guarantee of annual earnings

- any other action you believe was taken that is prohibited under the general protection provisions, including termination of employment because of an illness or injury prescribed by the regulations or engaging in a sham contracting arrangement.

You need to provide a description of the actions or conduct that your employer took that you believe amounted to adverse action or carrying out of a banned action. Form F8 also asks you to identify the section(s) of the Fair Work Act 2009 you allege that your employer has contravened. You should select at least one of the sections that is relevant to your application from the list contained in the form.

The applicant must take reasonable care to correctly identify the employer or other respondents named in the application. This will assist the Commission to promptly notify the other parties and schedule a conference to deal with the dispute. It is helpful to include the respondent employer’s ABN in the application form. An applicant should look at pay slips for this information.
For more information see the General Protections Benchbook regarding the general protections provisions (www.fwc.gov.au/resources/benchbooks/general-protections-benchbook), and Guide 1 – General protections overview.

**How to lodge an application**

Applications can be lodged by email, fax, post, in person at a Commission office or online using the Commission’s Online Lodgment Service (OLS).

Applications can also be made by telephone by calling the Commission’s office in your state or territory.


**Application fee**

Applicants are required to pay an application fee. The current application fee is available on the Commission’s website (www.fwc.gov.au/disputes-at-work/how-the-commission-works/lodge-an-application).

This fee may be waived on the grounds that its payment would cause serious hardship.

Any application for waiver of the fee should accompany the Form F8 application. The Fee waiver form is available from the Commission’s website (www.fwc.gov.au/resources/forms).

**Note**: the fee may be refunded if the matter is discontinued at least two days before it proceeds to a conference before a Commission Member.

**What happens next?**

Once a general protections application has been received by the Commission, the matter will be scheduled for a conference. The Commission will send both parties a notice of listing, containing the date, time and location of the conference. The Commission will also serve the employer with a copy of the employee’s application and any supporting documentation provided by the employee. The employer must then lodge their response within seven days.

**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 4 – The conference process
- 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](http://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](http://www.fwc.gov.au/about-us/contact-us)).

**Lodging your application**

Have you:

- completed Form F8?
- lodged Form F8 (and any supporting documents) with the Commission?
- paid the application fee, or completed and lodged a Fee Waiver form?

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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.