Overview
This guide explains the general protections consent arbitration process, including how parties can notify the Commission that they both agree to a Member of the Fair Work Commission (the Commission) arbitrating their dispute.

What is arbitration?
Arbitration is a binding form of dispute resolution. During arbitration, a Commission Member may:

- request and consider written submissions from witnesses, including the parties
- hear evidence under oath or affirmation from witnesses, including the parties
- ask questions about the matter.

At the end of arbitration the Commission Member will make a decision. This decision determines the matter and is binding on the parties. It can be subject to appeal.

What types of general protections disputes can be arbitrated?
The Commission can only arbitrate a general protections dismissal dispute, that is, where the applicant is an employee who alleges that they were dismissed in contravention of the general protections provisions of the *Fair Work Act 2009*. Parties can only ask the Commission to arbitrate a dispute where the dismissal took effect after 1 January 2014.

Non-dismissal disputes that aren’t resolved through the conference process can only be determined by a court that has the jurisdiction to hear general protections matters. These are the Federal Court of Australia and the Federal Circuit Court of Australia.

See Guide 6 – General protections applications not resolved at the Commission for information about the court application process.

What needs to happen first?
Before a general protections dismissal dispute can be arbitrated, the Commission first must have held a conference. During a conference, a Commission Member will assist the parties to try to reach an agreed resolution to their dispute.

If the 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 to that effect.

A certificate is a Commission document which states:

- the parties to the dispute
- that the Commission conducted a conference, and
- that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

During the conference the Commission, taking into account all of the information before it, must advise the parties if it considers that the application would not have a reasonable prospect of success if it was
arbitrated by the Commission or dealt with by a court.

See Guide 4 – The conference process for more information.

**Notifying the Commission**

If the parties to the dispute agree to have the Commission arbitrate their dispute, the applicant needs to notify the Commission by completing and lodging Form F8B – Notification of agreement for consent arbitration of a general protections dispute.


**Lodgment and service of the completed form**

Both parties to the dispute need to complete and sign the form before it is lodged.

The Form F8B must be lodged with the Commission within 14 calendar days after the day the Commission issued the certificate. The form can be lodged by email, fax, post, in person at a Commission office or online using the Commission’s Online Lodgment Service (OLS).

**Arbitration process**

After receiving the notification, the Commission will send both parties a notice of listing specifying the time, date and location for the proceeding that will be held to arbitrate the dispute.

The notice will confirm the nature of the proceedings, for example whether the matter will be dealt with as a conference or hearing.

A conference is generally conducted in private, which means that only the parties, their representatives, if any, and their witnesses are allowed to attend the conference. Conferences are generally conducted less formally, and more flexibly than hearings.

A hearing is conducted in public, unless the Commission decides otherwise. The proceedings of a hearing are generally recorded, and the recordings may be transcribed. For more information about the conduct of hearings, see the Fair hearings practice note (www.fwc.gov.au/resources/practice-notes/fair-hearings).

A Member will give their decision either orally at the conclusion of the arbitration, or in writing at a later date. A Member’s decision finally determines the application, subject to any appeal.

**Orders**

When giving their decision, a Commission Member may make an order:

- for reinstatement of the person
- for the payment of compensation to the person
- for payment of an amount to the person for remuneration lost
- to maintain the continuity of the person’s employment
- to maintain the period of the person’s continuous service with the employer.

An order of the Commission must be complied with by both parties to the dispute. If a person breaches an order, it can be enforced through the Courts and this may result in further penalties being applied.
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 refer to the full set of general protections guides on the 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).

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.