General protections – Guide 6

General protections applications not resolved at the Commission

Overview
This guide outlines what happens when a general protections application is not resolved at the Fair Work Commission (the Commission), including where to go for help and access further information.

What if the matter does not resolve at a conference held by the Commission?
If attempts to resolve a general protections dismissal dispute at the Commission through the conference process are unsuccessful, the Commission will issue a certificate. This certificate will state that the Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful, other than through arbitration in the case of dismissal disputes.

The certificate can be used as proof that the matter has been to conference at the Commission should the applicant wish to make an application to court. In the case of dismissal disputes where the dismissal took effect after 1 January 2014, the certificate can also be used if both parties consent to the Commission arbitrating the dispute. Arbitration finally determines the matter, subject to appeal, without the parties needing to go to court. See Guide 5 – The consent arbitration process, for more information.

If a certificate is issued, and arbitration (for dismissal disputes) is not consented to, the employee can choose to make an application to either the Federal Circuit Court or Federal Court to deal with the matter.

If attempts to resolve a general protections non-dismissal dispute at the Commission through the conference process are unsuccessful the employee can choose to make an application to either the Federal Circuit Court or the Federal Court to deal with the matter.

For applications concerning a dismissal, this application must be made within 14 calendar days of the certificate being issued by the Commission.

Note: if agreement is not reached in an application involving dismissal, and the employee has not received a certificate within seven days of the conference, they should contact the Commission.

What if the Commission didn’t hold a conference?
In non-dismissal disputes, the Commission will hold a conference to deal with the dispute only if both parties agree to participate.

If a conference wasn’t held, the applicant can chose to make an application directly to the Federal Circuit Court or the Federal Court. The applicant does not require a certificate from the Commission to do this.
How is an unresolved application decided?

In the event that a person is found by the Federal Circuit Court or the Federal Court to have breached the general protections provisions of the Fair Work Act, the 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.

Federal Court and Federal Circuit Court forms

There are specific forms that must be used when lodging a general protections matter in the Federal Court or Federal Circuit Court.


Information on filing in the Federal Court can be accessed on the Federal Court website (www.fedcourt.gov.au/).

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).

If you require further information or help, please refer to the Enquiries page on the Commission’s website (www.fwc.gov.au/about-us/contact-us/enquiries).

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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.