Frequently asked questions

About this guide
This guide provides responses to some frequently asked questions about general protections applications, the role of the Fair Work Commission (the Commission) and the role of the courts in dealing with general protections matters. Further information about each stage of the Commission’s general protections process is available in General Protections Guides 1 to 8, available on the Commission’s website.

Making an application

What application form do I use?
To make an application, you must complete and lodge Form F8 – Application for the Commission to Deal with a General Protections Dispute.

This 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 office in your state or territory.

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.


How long do I have to make an application?
General protections applications involving a dismissal need to be made within 21 calendar days after the day the dismissal took effect.

General protections non-dismissal applications do not need to be lodged within the 21 calendar day timeframe. These can be made up to six years from the date of the alleged contravention.

What if I am outside the lodgment timeframe?
The Commission may allow an extension of time for an application to be lodged if it is satisfied that there are exceptional circumstances, taking into account:

- the reason for the delay
- any action taken by the person to dispute the dismissal
- prejudice to the employer (including prejudice caused by the delay)
- the merits of the application
- fairness as between the person and other persons in a like position.

**Is there an 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](http://www.fwc.gov.au/disputes-at-work/how-the-commission-works/lodge-an-application)).

Any application for waiver of the fee should accompany the Form F8 application, and not be submitted separately. A copy of the Fee Waiver form can be downloaded from the Commission’s website ([www.fwc.gov.au/resources/forms](http://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 if I lodge an application then decide I do not want to proceed?**

An applicant may discontinue a matter at any time by:


- advising the Commission by telephone or in writing that they wish to discontinue, settle or withdraw their matter, or otherwise no longer require the Commission to deal with the matter

- advising the Commission during a conference that they wish to discontinue the matter.

**Can I lodge an unfair dismissal application at the same time as a general protections dismissal application?**

No, you cannot make a general protections dismissal application at the same time as an unfair dismissal application. You can only make one claim about the same dismissal at any one time. If more than one application to deal with a matter is lodged with the Commission, the Commission will contact you to confirm which application you want to progress.

**What if I am a contractor?**

Some of the general protections apply to people who have entered into contracts for services, called contractors. For example, a contractor is free to become, or not become, a member of an industrial association, and engage, or not engage, in industrial activities.

**Responding to an application**

**What form do I use to respond to an application?**

To respond to an application, you need to use Form F8A – Employer’s Response to Application for the Commission to Deal with a General Protections Dispute.

How long do I have to respond?

Employers need to complete and lodge Form F8A with the Commission within seven calendar days of receiving a copy of the employee’s application.

What do I do with the form?

Employers need to lodge Form F8A with the Commission by email, fax, post or in person at a Commission office.


Employers also need to deliver a copy of the Form F8A (including all supporting documents) to the employee at the address specified in their application within seven days of receiving it. This can be done by:

- Express Post (be sure to keep the identifying barcode sticker on the envelope)
- registered post
- email to the email address the employee specified in their application
- handing it to the applicant
- handing it to a person over 15 who is
  - at the applicant’s residence, or
  - at the address specified by the applicant as the place for service.

The general protections process

Do I need to attend a conference?

If the general protections matter involves a dismissal, the Commission will hold a private conference and those involved must attend.

If the general protections matter involves action other than dismissal, the Commission will hold a private conference if both parties agree to participate. The employer may indicate on their response to the application in Form F8A whether they agree to participate in a conference.

Can I request an adjournment of the conference?

Yes, you can make a request for the conference to be adjourned (rescheduled). The request needs to be made in writing, and must explain why you need to change the day or time of the conference. An adjournment is usually only granted for a significant reason and the Commission Member dealing with the application may ask for evidence of why you require the adjournment, such as a medical certificate.

If you do need to request an adjournment, you should apply for the adjournment as early as possible and, where possible, before the day of the conference. If you are going to be absent from a proceeding, you must notify the Commission before the proceeding or, in the case of an unexpected emergency, as early as possible.

See the Fair Hearings Practice Note (www.fwc.gov.au/resources/practice-notes/fair-hearings), for more information about adjournments.
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
- 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 or hearing 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 do not 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.

Do I need to be represented?

No, you don’t need to be represented at the Commission. If you don’t have a representative, make sure you are well prepared and bring along all relevant information and documents to the conference. You should also make sure you follow any requirements or directions you are provided by the Commission Member dealing with your matter.

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 Member dealing with the matter why you would like these individuals to be present.

What if I need an interpreter?

If you require an interpreter (other than a friend or family member) in order to participate in conference, the Commission will provide an interpreter at no cost. You can ask for an interpreter on the form you lodge with the Commission, or by telephone or in writing as early as possible before the day of the conference.

Privacy

In general, conference proceedings are private and confidential. Details about the conferences will usually only be disclosed to the people directly involved, or their representatives. However, it is sometimes necessary for the Commission to issue a written decision (for example where an extension of time is sought).

Who pays my costs?

The employee and employer involved in a general protections application must generally meet their own costs.

The Commission may order an employee or employer to bear some or all of the costs of the other party if the general protections application or response to it was:

- frivolous, vexatious or made without reasonable cause, and/or
had no reasonable prospect of success.

In certain circumstances, the Commission may also order costs against a lawyer or paid agent representing a party in a general protections application.

For information on costs involved in making an application to the Federal Court or Federal Circuit Court, you will need to contact the Court directly. See Court contact details below.

After the conference

What happens if an application does not settle at a conference with the Commission?

If attempts to resolve a general protections dispute at the Commission though 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, it can also be used if both parties consent to the Commission arbitrating the dispute. Arbitration finally decides the matter, subject to any 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.

How do we notify the Commission that we consent to arbitration of our dismissal dispute?

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


How long do I have to lodge a notification of consent to arbitration?

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).

What orders can the Commission make after an arbitration?

When giving their decision at the conclusion of an arbitration, 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 penalties being applied.

**How long do I have to lodge an application with the Court after my conference?**

In general protections dismissal disputes, the employee must make any application to the Federal Circuit Court or Federal Court to deal with the matter within 14 calendar days of the certificate being issued.

In general protections non-dismissal disputes, the employee may make a court application without a certificate, and the 14 calendar day timeframe does not apply.

**What orders can a Court make?**

In the event that a person has been found by one of the Courts to have breached the general protections provisions of the *Fair Work Act 2009* (the Fair Work Act), the Courts have the power to:

• issue a monetary penalty

• make an order for reinstatement

• make an order awarding compensation for loss

• grant an injunction or interim injunction

• award costs, but only in limited circumstances.

**Court contact details**

If you require information about lodging an application with the Federal Court or Federal Circuit Court, you should contact the Courts directly.


**Other types of applications**

**What is an unfair dismissal?**

An unfair dismissal occurs where an employee makes an unfair dismissal remedy application and the Commission finds that:

• the employee was dismissed

• the dismissal was harsh, unjust or unreasonable

• the dismissal was not a case of genuine redundancy, and

• where the employee was employed by a small business (a business with fewer than 15 employees), the dismissal was not consistent with the Small Business Fair Dismissal Code.

For more information about unfair dismissals please see the Unfair Dismissals Benchbook ([www.fwc.gov.au/resources/benchbooks/unfair-dismissals-benchbook](http://www.fwc.gov.au/resources/benchbooks/unfair-dismissals-benchbook)).
What is an unlawful termination?

If an employee believes they have been dismissed because of a discriminatory reason and they are not a national system employee they can lodge an unlawful termination application with the Commission. An unlawful termination claim needs to be made within 21 calendar days after the date the dismissal took effect.

A person can only make an unlawful termination application if they aren’t entitled to make a general protections court application.

Searching for cases

Generally the Commission cannot make a decision or order in relation to merits of a general protections application. It can make a decision in relation to extension of time and costs. These decisions are searchable on the Commission's website (www.fwc.gov.au/search/document/decision).

From 1 January 2014, where parties consent, the Commission will arbitrate and make decisions in respect of general protections applications involving a dismissal. These decisions will be searchable on the Commission's website as they are issued (www.fwc.gov.au/search/document/decision).

Decisions that have been handed down by the Federal Court or Circuit Court may be searchable through the AustLII website (www.austlii.edu.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](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)).