Glossary of common terms

This glossary defines some common terms used throughout the unfair dismissal process.

**Adjournment**
To suspend or reschedule proceedings (such as a conciliation, conference or hearing) to another time or place.

**Advocate**
A person representing a party to a matter before the Commission.

**Affirmation**
A solemn promise to tell the truth in relation to any evidence that you give—a non-religious version of an oath.

**Appeal**
To request that a decision of a single member of the Commission be reviewed by a Full Bench to determine if the decision made is consistent with the Fair Work Act. A person must seek the permission of the Commission to lodge an appeal by lodging a Form F7—Notice of Appeal.

**Applicant**
A person who has made an application for unfair dismissal remedy under s.394 of the FW Act.

**Application**
The formal way to start a case before the Commission. An application can only be made using an approved form published on the Commission website.

**Arbitration**
The process where a member of the Commission will hear evidence, consider submissions and then make a decision in a matter.

Arbitration occurs in a formal hearing and generally involves the examination and cross-examination of witnesses.

**Associate**
The Commission member’s assistant.

**Award**
A document made by the Commission which sets out minimum terms and conditions of employment within a particular industry or company. Contains information such as wages, hours of work, overtime rates, allowances, etc.
**Binding decision**
A decision made by a member of the Commission which is legally enforceable.

**Casual employee**
An employee engaged on an hourly basis who works regular and systematic hours (as distinct from full-time—38 hours per week, or part-time—less than 38 hours on a regular basis).

A casual employee receives an allowance above the normal hourly rate to make up for not accruing entitlements such as paid leave (including sick leave), public holidays or notice payments.

**Commission**
Please see Fair Work Commission

**Commissioner**
A member of the Fair Work Commission.

**Commonwealth Authority**
An entity which is set up to enforce specific legislation, often considered as a federal government agency. Examples include the Australian Tax Office, the Australian Securities and Investment Commission and the Australian Competition and Consumer Commission.

**Compensation**
A requirement to pay money to an applicant as reimbursement for loss suffered as a consequence of an action.

**Conciliation**
An informal method of resolving an unfair dismissal application by helping the parties to reach a settlement.

An independent conciliator can help the parties explore options for a resolution without the need for a conference or hearing before a member.

Conciliation is usually the first step taken in the resolution of an unfair dismissal claim.

**Conciliator**
A Commission staff member trained and experienced in conciliation, workplace relations and unfair dismissal law who has been appointed to conduct conciliation of unfair dismissal applications prior to the matter being referred to a member for arbitration.

**Constitutional Corporation**
A trading, financial or foreign corporation, a Proprietary Limited (Pty Ltd) company is an example.

**Contractor**
A person who works for themselves, not as an employee for an employer.
Cross-examination
To question a witness under oath or affirmation about the contents of their statement or regarding issues referred to in the matter before the Commission.

Decision
A determination made by a single member or Full Bench of the Commission which is legally enforceable.

A decision in relation to a matter before the Commission can include the names of the parties and will generally outline the basis for the application, comment on the evidence provided and include the judgment of the Commission in relation to the matter.

Determinative conference
A conference conducted under s.398 of the FW Act where the member makes a final determination about the unfair dismissal application. Determinative conferences are conducted in private.

Directions
Instructions given by the Commission to the parties which sets out a timetable in accordance with which they must file in the Commission and serve on each other an outline of submissions, witness statements and any supporting documents.

Dispute
Where two or more parties cannot agree on an issue.

Eligibility
Whether a person meets the requirements set out by the Act with regard to making an application for unfair dismissal. An example is that a person must have been employed for the minimum employment period.

Enterprise agreement
A legally enforceable agreement which has been approved by the Fair Work Commission that sets out the employment conditions of a group of employees and their employer, which was created by negotiations between that group of employees and their employer.

Evidence
Information which tends to prove or disprove the existence of particular belief, fact or proposition.

Certain evidence may or may not be accepted by the Commission, however the Commission is not bound the normal rules of evidence.

Evidence is usually contained within or attached to a witness statement or provided verbally by a witness in a hearing.

Extension of time
To permit an application to be lodged after the 21 calendar day period set out by the Act.
Full Bench

A Full Bench of the Fair Work Commission consists of three or more Commission members, one of whom must be a Deputy President. Full Benches are constituted by the President to hear appeals, matters of significant national interest and various other matters specifically provided for in the FW Act.

Fair Work Act 2009 (FW Act)


Fair Work Commission (Commission)

The independent, national workplace relations tribunal established under the Fair Work Act 2009. Established as Fair Work Australia in 2009, it was renamed the Fair Work Commission on 1 January 2013 following enactment of the Fair Work Amendment Act 2012.

Fair Work Commission Rules

The Rules set out how the Commission performs its role as required by the legislation. The Rules contain procedural information and guidelines.

Genuine Redundancy

Please see Redundancy

Hearing

A proceeding before the Commission to allow the parties to present their evidence and submissions in relation to a matter. Unless the member orders otherwise hearings are open to the public.

A hearing may be held if an unfair dismissal application is not resolved or withdrawn at or before the conciliation.

Hearings List

A list prepared daily by the Commission which sets out the matters which are listed for attention and published both online and in major daily newspapers nationally.

High income threshold

A wage limit set by the legislation (an indexed annually) which is the maximum amount a person can earn and still be eligible to lodge an unfair dismissal application unless they are covered by a modern award or have an enterprise agreement apply to their employment.

Jurisdiction

The scope of the Commission's power and what the Commission can and cannot do.

The power of the Commission to deal with matters is contained in legislation. The Commission can only deal with matters for which it has been given power by the Commonwealth Parliament.

Jurisdictional objection

To make an objection that the Commission is not legally able to hear an unfair dismissal case. An example is that the employee was employed by a state government and as a result is not in the national system.
Lawyer
A person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Lodge
To make a formal application, response or submission to the Commission.

Matter
An application or other proceeding before the Commission.

Matter number
An individual identification number given to each matter lodged with the Commission, sometimes also referred to as a case number. For example an unfair dismissal application the matter number will start with the letter ‘U’ followed by the year then a unique number i.e. U2014/1234

Member
A person appointed by the Governor-General to decide matters at the Commission. A member may be the President, a Vice President, a Deputy President or a Commissioner.

Misconduct
Where a person’s actions or behaviour is considered wrong or improper.

Modern award
Modern awards are awards that are made by the Fair Work Commission. Modern awards provide a fair and relevant minimum safety net of employment conditions for employees.

National system employee
An employee that is employed by a constitutional corporation, the Commonwealth or a state reference employer, in certain designated industries or in a territory.

Notice of Listing
A formal notification sent by the Commission setting out the time, date and location for a matter to be heard. A notice of listing can also include specific directions or requirements.

Non-constitutional corporation
A corporation whose main activity is not trading or financial. Sole traders, partnerships and Trusts are examples of non-constitutional corporations.

Oath
A solemn promise to God that you will tell the truth in relation to any evidence that you give.

On the papers
A decision where the Commission determines an issue based on the information provided by the parties, instead of by holding a hearing, is made ‘on the papers’.
Outcome
The end result of the unfair dismissal application.

Outline of submissions
A written document that clearly sets out the matters which support a case before the Commission.

This could be the grounds on which an employee claims their dismissal was unfair, or on which an employer claims that the dismissal was fair. This document should include how the specific facts of the case address unfair dismissal law, as set out in decisions of the Commission and in the legislation.

All facts, information and evidence that you wish to bring to the attention of the Commission should be included in the outline of submissions.

Paid agent
A person acting as a paid representative for a party to an unfair dismissal matter—an advocate.

Party
A person or organisation involved in a matter before the Commission. Parties in an unfair dismissal matter are generally the applicant (the employee) and the respondent (the employer).

Proceeding
A matter before the Commission.

Redeploy
To transfer an employee to another job.

Redundancy
A person’s dismissal was a case of genuine redundancy if:

- the person’s employer no longer required the person’s job to be performed by anyone because of changes in the operational requirements of the employer’s business, and
- the employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.

A person’s dismissal was NOT a case of genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within the employer’s business or the business of an associated entity of the employer.

Reinstatement
To return an employee to the job they previously held before they were dismissed. If the original position is not available the employee should be returned to a position as close as possible in remuneration and status to the original position.

Remedy
The possible outcomes of a matter before the Commission. This could include an order for reinstatement or compensation made by the Commission.
Representative
Someone who you allow to act on your behalf to advance your case. This could be a lawyer, a paid agent, an employee or employer organisation or someone else.

A lawyer or paid agent can only represent you before the Commission with permission of the Commission.

Respondent
A party responding to an application made to Commission.

Serious hardship
Where a person is in such a difficult financial situation that paying the application fee for an unfair dismissal would have unintended consequences such as an inability to pay for food, rent or utilities.

Serious misconduct
Includes both wilful or deliberate behaviour by an employee (that is inconsistent with the continuation of the contract of employment) and conduct that causes serious and imminent risk to the health or safety of a person or the reputation, viability or profitability of the employer’s business. Examples include theft, fraud, assault and intoxication.

Service (Serve)
A requirement to send a copy of a document (and all supporting documents) to another party or their representative, usually within a specified period.

A person’s obligation to serve documents can be met in a number of ways. The acceptable ways in which a document can be served are listed in Parts 7 and 8 of the Fair Work Commissions Rules 2013.

Serving documents
Please see service

Settlement
To agree to a resolution of the unfair dismissal matter. Generally a negotiated outcome which both parties are satisfied with. Once the terms of settlement have been agreed, the parties are bound by them.

Small business
A business that employs fewer than 15 employees.

Small Business Fair Dismissal Code
A code declared by the Minister for Education, Employment and Workplace Relations for small businesses to follow when dismissing an employee so the dismissal is deemed to be fair.

Submissions
Please see outline of submissions
Summary dismissal
Where an employer dismisses an employee without notice (or payment in lieu of notice)—instant dismissal.

Support person
A person who attends a proceeding before the Commission to provide support to one of the parties. A support person does not get involved, they are there as a friend.

Sworn evidence
Evidence provided under oath (which is a religious commitment to tell the truth) or affirmation (which is a non-religious commitment).

Waiver
An applicant can request the application fee for lodging an unfair dismissal application be waived due to serious financial hardship. The form requests information on the applicant’s financial situation. A copy of the Fee Waiver form can be found on the Commission’s website.

Witness
A person who gives evidence in relation to something they saw, heard or experienced. A witness is required to take oath or affirmation before giving evidence at a formal hearing. The witness will be examined by the party that called them and may be cross examined by the opposing party to test their evidence.

Witness statement
A written statement that is usually in the form of a sworn or affirmed affidavit or statutory declaration. The witness statement should detail the information that the witness will rely on during the hearing.
Legal advice

The Commission cannot provide legal advice.

As part of the unfair dismissal application process, parties may choose to obtain their own independent legal advice.

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 unfair dismissal guides available on the Dismissal, termination and redundancy page (www.fwc.gov.au/termination-of-employment/unfair-dismissal) of our website.

1. Overview of the unfair dismissal laws
2. Flowchart on the process
3. Making an application
4. Responding to an application
5. Objecting to an application
6. Preparing for conciliation
7. Preparing for a conference or hearing
8. Frequently asked questions
9. Glossary of common terms

The Unfair Dismissals Benchbook can also assist parties lodging or responding to unfair dismissal applications (benchbooks.fwc.gov.au/unfair/).

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

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This guide is not intended to be comprehensive, but is designed to help employers and employees gain an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.