



## About the F90A response form

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### Response to an application for an unfair termination remedy

#### About unfair termination remedies

The [Fair Work Act 2009](#) provides for the Fair Work Commission (Commission), on application, to determine whether a **regulated road transport contractor** was unfairly **terminated**.

To be eligible to apply for an unfair termination remedy, a worker must:

- have been a regulated road transport contractor when they were terminated
- have been performing work under a **services contract** under which a **road transport business** received services
- have had the services contract terminated by, or as a result of conduct of, the road transport business
- have earned less than the [contractor high income threshold](#), and
- have been performing work under the services contract or a series of services contracts under which the road transport business received services, for a period of at least 6 months.

When assessing an application for an unfair termination remedy the Commission will consider:

- whether the worker was eligible to make an application
- whether the termination was unfair
- whether the termination was not consistent with the [Road Transport Industry Termination Code](#), and
- any objection the road transport business may raise.

The road transport business can object to an application for an unfair termination remedy on a number of jurisdictional grounds. A jurisdictional objection is not simply that the road transport business thinks the termination was not unfair. For example, the business may object because it does not think the worker is eligible to make the application.

For more information about unfair termination and objecting to an application see [Unfair termination for regulated road transport contractors](#) on the Commission's website.

## Who can use this form

Use this form if you are a **road transport business** or are responding for a road transport business and the Commission has served the road transport business with a form *F90–Application for an unfair termination remedy*.

## Lodging and serving your completed form

1. **Lodge this response form and any supporting documents** with the Commission within **7 days** after the day the road transport business was served with the form F90 application. You can lodge this form:
  - by email at [lodge@fwc.gov.au](mailto:lodge@fwc.gov.au), or
  - by post or in person at the [Commission’s office](#) in your state or territory.
2. **Serve a copy of your response and any supporting documents** on the Applicant within **7 days** after the day the road transport business was served with the form F90 application. You can serve this response and supporting documents on the Applicant in a number of ways, including by email or by express or registered post. Make sure you send the documents to the email or postal address specified in the form F90 application.

## Where to get help

### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make a response to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au) also contains a range of information that may assist.

### Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

### Legal or other representation

Representation is where another person speaks or acts on a person’s behalf, or assists a person in certain other ways in relation to a case. A representative could be a lawyer, paid agent, employer organisation or a not-for-profit association or body that provides support, advice or advocacy in relation to the kind of application or case concerned.

A person does not have to be represented in a case at the Commission.

There are some rules about when a lawyer or paid agent can represent a person.

Unless the Commission decides otherwise in a particular case, a lawyer or paid agent can represent a person without permission to:

- prepare and lodge this response,
- prepare and lodge submissions about this case, and
- write to the Commission and other people involved in the case on the person's behalf.

Generally, a person must give notice to the Commission and seek permission from the Commission Member dealing with their case if they wish to have a **lawyer or paid agent** represent them in a **conference or hearing**. A person does not need to give notice or ask permission if the lawyer or paid agent is:

- their employee or officer, or
- an employee or officer of an employer organisation that is representing them.

A person can notify the Commission using this form that they have a lawyer or paid agent – provide the lawyer's or paid agent's details at 'Does the road transport business have a representative?'

If a person needs to notify the Commission that they have a lawyer or paid agent after they have lodged this form, or if they need to ask for permission for a lawyer or paid agent to take part in a **conference or hearing**, use [form F53](#).

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12, 13 and 14 of the [Fair Work Commission Rules 2024](#), information about [representatives and the rules they must follow](#), and the Commission's [practice note on representation by lawyers and paid agents](#).

## Glossary of common terms

**Applicant** – this is the person that is making an application.

**Jurisdictional objection** – this is a type of objection a respondent can raise to an application. A respondent can make this kind of objection if they think that the Commission, for a technical or legal reason, cannot hear the matter.

**Lawyer** – this is a person who is admitted to the legal profession by a Supreme Court of a state or territory.

**Paid agent** – in relation to a matter before the Commission, this is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**Party** – this is an applicant, a respondent or another person involved in a matter or case that is brought to the Commission.

**Person** – includes an individual and a body corporate.

**Regulated road transport contractor** – see section 15Q of the [Fair Work Act 2009](#).

**Road transport business** – see section 15R of the [Fair Work Act 2009](#).

**Respondent** – this is the person responding to an application made by an applicant.

**Service** – serving a document means giving a copy of the document to a person, usually to the other party to the matter. You can serve a document in a number of ways, including by email, express or registered post, or in person. Part 5 of Chapter 1, and Schedule 1 of the [Fair Work Commission Rules 2024](#) deal with service.

**Services contract** – see section 15H of the [Fair Work Act 2009](#).

**Terminated** – see section 536LL of the [Fair Work Act 2009](#).

## Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with an application for unfair termination remedy. The information will be included on the case file and the Commission may disclose the information to the other parties to this case and to other persons. For more details of the Commission’s collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information.

# Form F90A – Response to an application for an unfair termination remedy

[Fair Work Act 2009](#) (the Fair Work Act), section 536LU

This is a response to an application to the Fair Work Commission (the Commission) for an unfair termination remedy under Part 3A-3 of the Fair Work Act.

## The Applicant (the regulated road transport contractor)



Provide details below of the regulated road transport contractor who made the application (the Applicant) and the Commission case number. You can find these details in the form *F90 – Application for an unfair termination remedy*. The Commission case number can be found in our correspondence to you serving the application.

*Regulated road transport contractor* is defined in section 15Q of the Fair Work Act.

First name(s)	
Surname	
Commission case number	

## The Respondent (the road transport business)

Provide details below of the road transport business responding to the application.



Section 15R of the Fair Work Act defines *road transport business*.

Legal name of road transport business			
Road transport business's ACN (if a company)			
Road transport business's ABN			
Contact person			
Phone Number			
Mobile number			
Email address			
Postal address			
Suburb			
State or territory		Postcode	

**Has the Applicant given the correct legal name of the road transport business in their application for an unfair termination remedy?**

- Yes
- No – Make sure the correct legal name is set out above

**Does the road transport business have a representative?**



A representative is a person that is representing the road transport business. This might be a lawyer or paid agent. There is no requirement to have a representative.

- Yes – Provide representative’s details below
- No

**Road transport business’s representative**



These are the details of the person representing the road transport business (if any).

Name of person			
Firm, employer organisation or company			
Phone number			
Email address			
Postal address			
Suburb			
State or territory		Postcode	

**Is the representative a lawyer or paid agent?**

<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent
<input type="checkbox"/> No	

**1. The Applicant’s performance of work**

**1.1 What date did the Applicant begin to perform work under a services contract for the road transport business?**

**1.2 What date did the road transport business notify the Applicant of their termination?**

**1.3 What date did the termination take effect?**

**1.4 What were the Applicant’s earnings at the time of the termination?**

**1.5 In addition to the Applicant’s earnings, was the Applicant entitled to any non-monetary benefits at the time of the termination?**

Yes

No

If you answered Yes – Provide details (for example provision of a vehicle, mobile phone etc.)

**2. Jurisdictional and other objections**

**2.1 Does the road transport business have any jurisdictional or other objections to the application?**



Jurisdictional objections relate to why an Applicant is not eligible to make an application to the Commission. An objection is not simply that you think the Applicant’s termination was not unfair.

Yes

No – Go to question 3

**2.2 If you answered yes to question 2.1 – On what basis does the road transport business object? If the road transport business objects on multiple grounds you can select more than one from the list below:**

The application is out of time (ie lodged more than 21 days after the termination took effect)

The Applicant was not a regulated road transport contractor

The Applicant was not terminated (see section 536LL of the Fair Work Act)

The Applicant did not work under the services contract, or a series of services contracts under which the road transport business received services, for a period of at least 6 months (see section 536LE(c) of the Fair Work Act)

The Applicant’s earnings were equal to or more than the [contractor high income threshold](#) (see section 536LU(2) of the Fair Work Act and regulation 3A.02A of the [Fair Work Regulations 2009](#))



- The road transport business complied with the Road Transport Industry Termination Code.
- Other: \_\_\_\_\_

Explain why the road transport business objects on these grounds

### 3. Termination

#### 3.1 What were the reasons for the Applicant’s termination?



Using numbered paragraphs, specify the reasons for terminating the Applicant. Attach any text messages or other documentation given to the Applicant. Note that the Commission may send copies of any documents you provide to the Applicant. Add extra pages if necessary.

#### 3.2 What is the road transport business response to the Applicant’s contentions?



Using numbered paragraphs, set out the road transport business’s response to the Applicant’s contentions as to why the Applicant was unfairly terminated as set out in the application for an unfair termination remedy.

## Disclosure of information

The Commission may provide a copy of this response and any attachments to the other parties to this matter. This includes:

- the Applicant, and
- any representatives.

## Authority to sign and signature



For 'Authority to sign':

- If you are the road transport business—insert 'Respondent'
- If you are an employee or officer of the road transport business—insert your position title
- If you are the Respondent's representative and have provided your details in this form—insert 'Representative'.

Authority to sign	
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	
Name	
Date	