



# About the F3 Employer response form

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## Unfair dismissal

### About unfair dismissal

To make an unfair dismissal application to the Fair Work Commission (Commission), an employee must be covered by the national unfair dismissal laws and [must be eligible to make an application](#).

To be eligible to make an application, an employee must have worked for the minimum employment period and, in some cases, earned less than the [high income threshold](#).

The Commission will consider the following when assessing an unfair dismissal application:

- was the employee covered by the national unfair dismissal laws and
- was the employee eligible to make an application and
- has the employee been dismissed and
- was the dismissal harsh, unjust or unreasonable and
- any objection the employer may raise.

The employer can object to an unfair dismissal application on a number of jurisdictional grounds. A jurisdictional objection is not simply that the employer thinks the dismissal was fair. For example, the employer may object because the employer does not think the employee is eligible to make the application.

If the employer is a small business (employing fewer than 15 people), the employer may be required to show that it followed the [Small Business Fair Dismissal Code](#).

For more information about unfair dismissals and objecting to an application see the Commission's [unfair dismissal guides](#) and [Unfair Dismissal Benchbook](#).

### Who can use this form

Use this form if you are an employer or are responding for an employer and the Commission has served the employer with an unfair dismissal application (Form F2).

If the employer has been served with two or more Form F2 unfair dismissal applications concerning the same circumstances (such as where the employment of a number of employees is terminated at the same time), you can lodge one response for all of the applications if your response is the same for each application. If necessary, you can attach details of each individual applicant to whom your response relates (including name, date of commencement and entitlements) in a separate sheet.

## Lodgment and service of your completed form

1. **Lodge this response form and any supporting documents** with the Commission within **7 calendar days** after the employer was served with the Form F2 application. You can lodge this form by post, fax, or email, 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 calendar days** after the employer was served with the Form F2 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 F2 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 (such as a family member or friend, lawyer or paid agent, or employee of an employer organisation) speaks or acts on a party's behalf, or assists the party in certain other ways in relation to a matter. There is no requirement to be represented at the Commission.

You will need permission from the Commission Member dealing with your matter if you wish to be represented by a lawyer or paid agent at a conference conducted by the Commission Member or a hearing, unless the lawyer or paid agent is one of your employees or officers, or an employee or officer of an employer organisation, an association of employers or a peak council that is representing you. If you want to seek permission, you must lodge a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for lawyer or paid agent to participate in a conference or hearing.

You do not need permission to have a lawyer or paid agent prepare and lodge this form with the Commission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

## Glossary of common terms

**Applicant** – This is the person or organisation 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, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**Party** – A party is an Applicant, a Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** – The person or organisation responding to an application made by an Applicant.

**Service** – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 deal with service.

## Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with the unfair dismissal application. The information will be included on the case file and the Commission may disclose the information to the other parties to this matter 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 F3 – Employer response to unfair dismissal application

Fair Work Commission Rules 2013, rules 19, 20, 23, 46 and Schedule 1

This is a response to an application to the Fair Work Commission (the Commission) for an unfair dismissal remedy under Part 3-2 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who made the application. You can find this information on the unfair dismissal application Form F2.

<b>First name(s)</b>	
<b>Surname</b>	
<b>Commission matter number</b>	

### The Respondent (the employer)



These are the details of the employer responding to the application.

<b>Legal name of employer</b>			
<b>Employer's ACN (if a company)</b>			
<b>Trading name or registered business name</b>			
<b>ABN</b>			
<b>Contact person</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Mobile number</b>			
<b>Email address</b>			
<b>What industry is the employer in?</b>			

Note: If you provide a mobile number the Commission may send reminders to you via SMS.

**Has the Applicant given the correct legal name of the employer in their unfair dismissal application (Form F2)?**

Yes

No

**Do you need an interpreter?**



If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

Yes – Specify language

No

**Does the employer require any special assistance at the hearing or conference (eg a hearing loop)?**

Yes – Please specify the assistance required

No

**Does the employer have a representative?**



A representative is a person or organisation who is representing the employer. This might be a lawyer or paid agent, an employer association or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No – Go to question 1

**Employer's representative**



These are the details of the person or organisation who is representing the employer (if any).

<b>Name of person</b>			
<b>Firm, employer organisation or company</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	

<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

**Is the employer's representative a lawyer or paid agent?**

Yes

No

## 1. The Applicant's employment

**1.1 Did an award or an enterprise agreement apply to the Applicant?**



The Fair Work Ombudsman can help you find out which, if any, award or enterprise agreement applies.

Yes

No

If you have answered Yes – Provide the title of the award or enterprise agreement.

**1.2 What date did the Applicant begin working for the employer?**

**1.3 What date did the employer notify the Applicant of their dismissal?**

**1.4 What date did the dismissal take effect?**

**1.5 What was the Applicant’s wage or salary at the time of the dismissal?**

**1.6 In addition to their salary or wages, was the Applicant entitled to any other monetary amount(s) or any non-monetary benefit(s) at the time of the dismissal?**

Yes

No

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

**1.7 How many employees did the employer have at the time the Applicant was dismissed?**



Count the number of employees either at the time the employer gave the Applicant their notice or the time immediately before their dismissal, whichever was earlier. Count all full-time and part-time employees plus any casuals who are engaged on a regular and systematic basis.

## 2. Jurisdictional objections

### 2.1 Does the employer 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 that the Applicant's dismissal was fair. The Commission's [Unfair Dismissals Benchbook](#) has more information on jurisdictional objections.

Yes

No – Go to question 3

### 2.2 If you answered yes to question 2.1 – On what basis does the employer object? If the employer 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 dismissal took effect)

The Applicant was not an employee

The Applicant was not dismissed

The dismissal was a case of genuine redundancy

The Applicant's employment does not meet the minimum employment period

The Applicant earned more than the high income threshold (\$162,000 for dismissals after 1 July 2022)

The employer is a small business employer and the employer complied with the Small Business Fair Dismissal Code

Other



Explain why the employer objects on these grounds

### 3. Dismissal

#### 3.1 What were the reasons for the dismissal?



Using numbered paragraphs, specify the reason(s) for dismissing the Applicant. Attach any letter of dismissal and/or separation certificate given to the Applicant. Note that the Commission may send copies of any documents you provide to the Applicant. Attach extra pages if necessary.

#### 3.2 What is the employer's response to the Applicant's contentions?



Using numbered paragraphs, set out the employer's response to the Applicant's contentions as to why the dismissal was unfair.

Attach additional pages if necessary.

## 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
- any legal representatives.

## Consent to contact by researchers

The Commission undertakes research with participants in unfair dismissal matters to ensure a high quality process. Some research may be undertaken by external providers.

Do you consent to the contact details provided on page 1 of this form being provided to an external provider of research services for the sole purpose of inviting you to participate in this research?

Yes

No

## Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

<b>Signature</b>	
<b>Name</b>	
<b>Capacity/Position</b>	
<b>Date</b>	

If you are not the employer and are completing and signing this form on the employer's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**