

Job Watch Inc

*Unfair Dismissal Conciliation
Self-Representation Kit*

**Job Watch Inc is an independent, not for profit
employment rights community legal centre
which provides a range of assistance options
to workers in Victoria, Tasmania and Queensland**

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Why was this kit developed?

A core organisational value of Job Watch Inc (JobWatch) is access to justice for workers.

JobWatch recognises that the cost of legal representation can deter some people from pursuing their legal rights.

In the late 1990's JobWatch developed a free '*Unfair Dismissal Conciliation Conference Self-Representation Program*'. That program was conducted for over ten years and led to the development of this kit, which is designed to assist national system employees in Victoria, Tasmania and Queensland who are capable of conducting their own *matter* up to the initial stage of *conciliation*.

Important disclaimer

This kit provides general information only. It is not intended to be comprehensive and is not a substitute for professional legal advice.

Readers should not act on the basis of any information contained in this kit without first obtaining professional legal advice that takes into account the particular facts and circumstances of their legal case.

Job Watch Inc. disclaims any liability in respect of any action taken or not taken in reliance upon the contents of this kit.

This information is current at time of printing February 2017.

Who can use this kit?

If you are a **Victorian** employee, you can use this kit unless you were employed in a sector that provides essential services of core government functions, including State infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use this kit unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use this kit unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

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What is Unfair Dismissal?

An **Unfair Dismissal** (see “Definitions” section) occurs where you, the employee, makes an Unfair Dismissal application and the **Fair Work Commission (FWC)** finds that:

- You were eligible to make an Unfair Dismissal application (“see “Eligibility Chart” in Appendix); and
- You were dismissed; and
- Your dismissal was harsh, unjust and/or unreasonable; and
- Your dismissal was not a case of genuine redundancy; and
- Your dismissal was not consistent with the Small Business Fair Dismissal Code, where you were employed by a small business*.

**A small business is a business that employs less than 15 employees.*

What is an Unfair Dismissal application?

An Unfair Dismissal application is lodged by you (the **Applicant**) to initiate an Unfair Dismissal Claim against your former employer (the **Respondent**) provided that:

- You are eligible to lodge an Unfair Dismissal application (see ‘**Unfair Dismissal**’ information sheet in Appendix); and
- **You lodge your Unfair Dismissal application within 21 days of the date of your dismissal.**

The key steps in the Unfair Dismissal application process are:

- You lodge an Unfair Dismissal application;
- The application is checked by FWC to ensure that it is complete and valid;
- Your employer is notified of the application;
- FWC conciliates the application to try to have the **parties** resolve it by agreement; and
- An unresolved application is then determined by FWC following a conference or hearing unless you decide to discontinue your matter.

How can this kit assist you?

This kit can assist you by providing information and insight into the Unfair Dismissal conciliation process so you are able to represent yourself.

Provided that you are confident in your ability to present your own matter, and you use this kit as a guide, then you should be well placed to participate in a conciliation without the need for **legal representation**¹ — particularly as it is you, the employee/Applicant who usually has full knowledge and understanding of the circumstances that led to your Unfair Dismissal.

You can use this kit if you:

- Have lodged, or are about to lodge an Unfair Dismissal application with FWC; or
- Have already lodged and been given a time and date for a conciliation; and
- Have explored the possibility of legal representation but have chosen to represent yourself, at least up to the conciliation stage of the process; and
- Have the capacity to represent yourself in an Unfair Dismissal conciliation; and
- Have sought legal advice (if applicable) to confirm that your Unfair Dismissal Claim is the appropriate course of action for you in the context of other potential legal claims (such as alleged **discrimination, workplace injury, general protections dispute**, and/or other underpayment or contractual actions) that may be in a different legal jurisdiction².

Lodge within 21 days

**For further
information contact**

**The Fair Work Commission
Helpline on 1300 799 675**

1. *JobWatch acknowledges that some people will benefit from being legally represented throughout the entire Unfair Dismissal process, and so, where possible, should consider legal advice and representation.*
2. *JobWatch strongly recommends that you obtain legal advice, before or after you lodge your Unfair Dismissal claim regarding whether Unfair Dismissal is the best course of action in your circumstances.*

The stages of the Unfair Dismissal conciliation process

Stage 1: Before the conciliation

As soon as you become aware of your termination of employment, you should contact the **FWC Helpline on 1300 799 675** and/or visit the **FWC website (www.fwc.gov.au)** to check your eligibility to lodge an Unfair Dismissal application.

Please note: The timeframe for lodging an Unfair Dismissal application is **21 days** from the date that the termination took effect, which is the date that you last worked regardless of whether you were required to work out your **notice period** or not, unless you were on authorised leave at the conclusion of your notice period.

Action: Complete the *'Form F2 – Application for Unfair Dismissal Remedy'* - (see Appendix)

Applications may also initially be made by telephone to FWC.

FWC may accept a late Unfair Dismissal application outside of the 21 day time limit but only in exceptional circumstances (refer to FWC website).

There is an Unfair Dismissal application lodgment fee of \$69.60³ which may be waived in some instances by completing the ***'Application for Waiver of Application Fee'***. Contact the **FWC Helpline on 1300 799 675** and/or visit the **FWC website (www.fwc.gov.au)** to obtain the form.

The lodgement fee will be refunded if the matter settles at conciliation after you file a Notice of Discontinuance.

We also suggest that you read the attached information in the Appendix regarding:

- ***'Unfair Dismissal'***; and
- ***'Constructive Dismissal'***

Upon receipt of your Form F2, FWC will check the application and send a copy to the Respondent, who in turn will likely complete one or both of the following two (2) forms:

- ***'Form F3 - Employer's Response to Application for Unfair Dismissal Remedy'*** - (see Appendix) where the Respondent wishes to respond to the allegations by participating in a conciliation; or
- ***'Form F4 - Objection to Application for Unfair Dismissal Remedy'*** - (see Appendix) where the Respondent believes that the matter should not be heard by FWC and wishes to lodge an objection, usually on the grounds that you may not be eligible to lodge an Unfair Dismissal application.

Where the Respondent completes a F3 or F4 they are required to **serve**/forward you a copy.

If this does not occur, contact FWC in the days immediately prior to the conciliation to obtain a copy of the Respondent's Form F3 as it may contain information that is useful in preparing for the conciliation.

It is also at this stage that the Respondent may engage a lawyer. If a lawyer is representing the Respondent, this will usually be indicated on the Form F3.

³ Correct as at date of publishing - February 2017

If representation is arranged after the forms are lodged, or immediately prior to the conciliation, the Respondent's lawyer should complete the '**Form F53 - Notice of Representative Commencing to Act**' – (see Appendix). This form should be filed at FWC before the conciliation as well as served on you, however the Form F53 is not required for the conciliation to proceed.

If you wish to confirm the status of the Respondent's representation prior to the conciliation you can contact FWC.

In the event that the Respondent does have legal representation, try not to let this overwhelm or intimidate you as it may actually assist the conciliation process. For example, a legal representative is likely to understand the applicable laws and be able to advise their client (the Respondent) about the merits of your application and the benefits of making a suitable offer to resolve your Unfair Dismissal claim.

Next you will receive the '**Notice of Listing**' – (see Appendix). This confirms the date, time, and type of conciliation (i.e. by telephone or 'face-to-face').

The Notice of Listing will also list the parties that have been notified. These are often (but not always) the same parties that will participate in the scheduled conciliation. For example, a Human Resource Manager may represent the Respondent instead of the person involved in your dismissal.

The conciliation will usually be conducted within a few weeks of the date you lodged your application with FWC.

Stage 2: At conciliation

The conciliation is the initial 'informal' hearing of your Unfair Dismissal application. It is **private and confidential** in nature, and confidentiality applies in so far as the law allows.

Conciliations are usually conducted as a phone conference where all three parties, including the Conciliator, will communicate with each other by phone from their respective work or home location.

Whilst most conciliations are conducted as phone conferences, it is possible for either party to request FWC to have the conciliation conducted as a 'face to face' meeting at the offices of FWC. This request may be granted by FWC in some circumstances provided both parties agree and where FWC is satisfied there are substantial grounds.

The conciliation aims to establish whether there is any prospect of the matter being resolved prior to the matter being heard at **arbitration**.

The parties to a conciliation are usually:

- The Applicant (you) and your **representative** or support person (if applicable); and
- The Respondent (your former employer) and their Human Resource person and/or their representative/lawyer (if applicable); and
- The FWC Conciliator.

The Conciliator is impartial and independent. Their role is to facilitate the conciliation and assist both sides in reaching an agreement so as to avoid a formal hearing by way of arbitration (which is similar to a hearing at Court).

FWC may grant an adjournment request when satisfied there are substantial grounds for doing so. Adjournment requests must be made in writing.

Not all conciliations follow the same process as each Conciliator will usually have their own unique style and/or approach to each conciliation.

Generally the conciliation process is as follows:

- Introduction of the parties;
- Conciliators opening statement;
- Opening statements of both parties;
- Identification and exploration of major issues;
- Private sessions for both parties with the Conciliator;
- Negotiation - Conciliator will convey proposals for settlement options between the parties; and
- Agreement and/or close.

The time allocated for conciliation is 1.5 hours.

The conciliation process in detail:

- On the date and time indicated on the Notice of Listing the Conciliator will contact you on the number provided and will proceed to coordinate the phone conference in such a way that all three parties (including the Conciliator) are joined in a phone conference and can hear each other by phone;
- The Conciliator will then ascertain if there are any other individuals listening in or in attendance;
- The Conciliator will usually clarify the involvement of any other person(s) and confirm that all parties are comfortable with the nature of their involvement in the conciliation;
- If you wish to have a support person with you in the conciliation, you should indicate this to the Conciliator as early as possible as a matter of courtesy. If your support person is not a lawyer or a representative, then they should not participate in the conciliation as your representative;
- The Conciliator will then usually clarify their particular role in the conciliation and will indicate that the conciliation is private and confidential and that, for example, sworn evidence will not be given;

- In the absence of sworn evidence, the Conciliator will at times hear two different versions of the same event. The Conciliator does not have the authority to make findings on which version of events are to be preferred;
- The Conciliator will usually clarify that they are unable to make a decision that is binding upon the parties as this can only happen at arbitration. However, in private, they may indicate to each party the respective 'strengths and weaknesses' of each party's position;
- Having defined their role, the Conciliator will then usually ask you to explain why you have lodged your Unfair Dismissal application i.e. present your version of the relevant events; and
- It is a good idea to make your presentation using scripted notes, or 'bullet point' guidance notes, that present the relevant facts in chronological order.

As a general rule and where applicable, your presentation should:

- Be presented in date/event order, starting with confirmation of your commencement date, your length of employment, your role, and the key events that led to your dismissal;
- Make reference to any performance issues (positive or negative) including any promotions, pay rises based on performance, the absence of any prior warnings (and if there have been previous warnings, the date and context of any warnings received from the Respondent);
- Be concise (perhaps around 5 minutes in duration);
- Be relevant to your Unfair Dismissal claim (see the section '***What is Unfair Dismissal?***' in the '***Unfair Dismissal***' information sheet in the Appendix);
- Avoid raising rumours or gossip;
- Be presented in such a way as to be respectful to all parties involved in the conciliation;
- Be accurate and honest and delivered in a calm manner that avoids personal threats and/or remarks of a personal nature that may only result in the conciliation being unsuccessful and prematurely concluded (which is rarely in the best interests of either party);
- Acknowledge issues that you believe the Respondent is likely to mention in their later presentation, so as to maintain your credibility in the eyes of the Conciliator; and
- If you think the reason the Respondent gave you for terminating your employment is a sham or untrue, you should make this clear at the end of your presentation, and state what you believe was the true reason for the termination of your employment.

NOTE: Remember that you are trying to explain why your dismissal was "unfair".

Example presentation

"I began working with UVW Pty. Ltd. as a permanent full time employee back in January 2011.

My role was that of a Clerical Assistant, and included processing invoices and taking phone calls on the Administration line.

I enjoyed my job and working with my colleagues, and I believe that I was very good at my job. In fact I was given a pay rise in the middle of 2009 based on my good performance at work.

In August of 2012 my then Manager left, and XY began as my new Manager.

I got to know XY reasonably well over the next month or so and continued to perform my role to the best of my ability. However in the middle of October 2009 I happened to be late to work on two separate occasions. The first was a train cancellation, and I rang the office and said that I would be 20 minutes late.

The second time was only a week later and was an unfortunate morning where I must have forgotten to set my alarm and was 15 minutes late.

I again rang XY on this day and said that I would be late and apologised and XY told me to "Just hurry up and get in here will you" and abruptly hung the phone up on me.

During the month of November and early December 2012 I noticed that XY seemed to treat me differently. Sometimes she would ignore me when I said 'good morning' and at other times she would seem to get annoyed and frustrated with me for reasons I didn't understand.

On the morning of December the 5th 2012 I was on my break in the kitchen talking to a colleague about my weekend, and XY came in and told me words to the effect that if I didn't hurry up and get back to work 'there would be a problem'.

I probably 'rolled my eyes' at this point, which in hindsight I should not have done, and XY told me to go straight to her office (which I did) and she proceeded to terminate my employment because of what she said was insubordination (as XY put it) on my part, and I was told to leave the workplace immediately and not come back.

*I did not get paid my two weeks pay instead of notice as XY said my behaviour was "**serious and wilful misconduct**". However I am strongly of the view that it was not. I did get paid my accrued annual leave by cheque in the mail.*

I note that I had never had any problems with being late before October of 2012 and had never received any warnings (written or verbal) about anything across the entire two years of my career at UVW Pty. Ltd.

Despite this, my two days of being late back in October last year upset my new Manager in such a way that she seemed to target me thereafter regardless of my genuine attempts to be polite and amicable with her across that time.

*So I have lodged my Unfair Dismissal application as I believe that my termination was unfair, in that it was '**harsh, unjust and/or unreasonable**' and that the loss of my job (which was important to me and my family) occurred without me being given any '**procedural fairness**'.*

By that I mean that if my Manager had a problem with me back then, I would have thought that she could have spoken to me about any of these issues. This would have given me a chance to respond to her in a way that may have resolved whatever the issue was, or at least I could have fixed anything that she felt I needed to do better or differently.

However XY didn't do this for reasons I still do not understand and instead she just decided to terminate my employment which I think was unfair given the circumstances and the fact that I had been a good and loyal employee.

I am genuinely open to resolving this matter today in this conciliation. I am seeking my two weeks pay instead of notice plus compensation for being unfairly dismissed. If my matter cannot be resolved today, I have no option but to continue to pursue this matter.

After your opening statement:

- Once you have made your opening statement, and answered any further questions, the Conciliator will ask the Respondent to make their presentation in response;
- You should take notes where necessary during this time and remain quiet and respectful during the Respondent's presentation. Be prepared to hear things that you don't like or you do not think are true;
- Upon conclusion of the Respondent's presentation you can seek to ask questions of the Respondent (usually through the Conciliator) to obtain clarity on any points raised that were inaccurate or exaggerated in your view;
- The Conciliator will possibly also ask questions to clarify any points they feel are relevant to the matter;
- At the conclusion of the exploration of the major issues and after any questions and answers, the Conciliator will adjourn the joint session and speak with the parties privately. It is at this time that options for settlement of the disputes will be discussed in private with the Conciliator. It is usual that the Conciliator will convey proposals and offers between the parties. (see below "What do I ask for at conciliation?");
- At this stage, the Conciliator will ask you what you are seeking as a remedy for your Unfair Dismissal claim. The Conciliator will not make any recommendations or give advice regarding settlement proposals. However, the Conciliator will answer any questions you have regarding the law as it applies to your application;
- Around this time it will usually become clear whether a settlement is either:
 - ◇ **Not possible:** in which case the matter will be sent back to FWC by the Conciliator whereafter your matter will be given a date for arbitration; or
 - ◇ **Possible:** in which case the Conciliator may persist in seeking resolution between the parties; or
 - ◇ **Agreed upon:** in which case the Conciliator may assist the parties to compose a '**Terms of Settlement**' (or *Deed of Release*) document (see sample document in Appendix) that identifies the basis upon which both parties agree to settle the matter.

What do I ask for at conciliation?

- This is a very difficult question to answer due to the fact that Unfair Dismissal matters can settle for anything to which the two parties agree, including all or any of the following:
 - ◇ a handshake and an apology;
 - ◇ a written reference;
 - ◇ reinstatement (with or without back pay);
 - ◇ monetary compensation up to and even beyond the maximum that FWC may award at arbitration (see the '*Unfair Dismissal*' information sheet in the Appendix); and/or
 - ◇ anything else to which the parties can agree.

- There are some important factors you should consider when discussing a possible settlement, including:
 - ◇ What FWC may award you if your claim was successful at arbitration, taking into account the following:
 - ⇒ How harsh, unjust and/or unreasonable was the termination of your employment;
 - ⇒ Whether your performance or conduct contributed to your dismissal;
 - ⇒ Your actual financial loss taking into account any period of new employment following your termination and any ongoing financial loss after you started a new job. For example, if you went on to obtain a lower-paid job, FWC may take this into account when calculating compensation;
 - ⇒ The circumstances of the parties, i.e. your length of tenure, service record, future employability, etc;
 - ⇒ That the maximum you may be awarded is 26 weeks wages as compensation, capped at \$69,450⁴ if you earned more than this amount in the 6 months prior to the termination of your employment.
 - ◇ Whether or not the offer and/or counter offer is 'in the ballpark' (i.e. whether the offer or counter offer is realistic or something you can accept to avoid the risk of arbitration);
 - ◇ Any risk of an 'order for costs' being made against you later in the proceedings (see 'Costs' in the '**Unfair Dismissal**' Information Sheet - see Appendix);
 - ◇ How much time and energy you are prepared to commit to the process of representing yourself; and
 - ◇ Any legal costs associated with pursuing your application to the arbitration stage.

Additional tips for phone conciliations

- Consider obtaining/using a 'hands free' phone on the day of the conciliation so that you can have both hands free to write notes or find documents;
- Consider making a 'hands free' call to a friend beforehand to check that the equipment works and to adjust the volume controls;
- Have all relevant documents and writing materials with you;
- Avoid distractions around you prior to and during the conciliation (remember conciliations often go for an hour to an hour and a half);
- If waiting for the Conciliator's call ensure that you are ready and available to take the call on time;
- Turn off any mobile phones that you and/or your support person have that could ring during the conciliation;
- Have a constant awareness that you (and any support person) can likely be heard by the conciliation participants in a joint phone conference;
- Have a glass or jug of water with you;

⁴ Correct as at date of publishing February 2017

- Go into the conciliation knowing to what extent you are prepared to continue your claim;
- Consider making a realistic opening offer of settlement that is possibly higher than what you are potentially willing to accept;
- Know what your 'bottom line' is (i.e. what you are not prepared to go beneath) to settle your claim;
- Think of an upper and lower range of settlement possibilities but be flexible and willing to compromise;
- As the conciliation process unfolds, and you get a sense as to how the conciliation is progressing (from your perspective) you may wish to reassess your 'settlement' goal within the aforementioned range;
- Remember that the Respondent's offer or counter-offer may not be their best or last offer. It is possible that their offer will improve with time but this cannot be guaranteed. Keep in mind that the Respondent may also withdraw an unaccepted offer, and/or refuse to make a counter-offer;
- If you get to the point of signing a Terms of Settlement (or Deed of Release) document, you should first read the document carefully and make sure that you understand it. Ask for assistance from the Conciliator if you do not fully understand the document. You should pay particular attention to:
 - ◇ what you will get from the Respondent;
 - ◇ when you will get it; and
 - ◇ what you will be giving up in terms of future claims against the Respondent if you agree to the Terms of Settlement.
- Ask yourself if you still want to pursue any other matters against the Respondent (e.g. for discrimination or for underpayment of wages etc). If so, does this document stop you from pursuing those matters? See '**Terms of Settlement**' document in the Appendix for further clarification and explanatory notes as to what this document usually means; and
- If you do have other claims and you want to continue to pursue them, you should make it clear from the outset that you are only negotiating to resolve your Unfair Dismissal claim and any documents signed should reflect this fact.

Additional tips if you have a 'face-to-face' conciliation at FWC

- Attend the conciliation on time. In fact it may be prudent to attend earlier and locate the room the conciliation is going to take place in. This information is available on the Hearing List located at the entrance to the FWC lifts. You may consider arriving at the allocated room early and if it is vacant take a moment to get a "feel" for the environment before the conciliation commences and then go and get a coffee/tea nearby and prepare accordingly.
- If going to a local café (or similar) before or after a conciliation always be aware of the people that are around you at that time, particularly if/when discussing your matter with a support person in that environment.
- If attending the FWC in the city, consider using public transport as parking and parking fines can be expensive.

Stage 3: After the conciliation

Once the Respondent has done what it said it would do in the Terms of Settlement agreement (i.e. it has reinstated you or paid you compensation etc) you should complete and file a **Form F50 – Notice of Discontinuance**, which will formally conclude your Unfair Dismissal application at FWC.

Upon receipt of the Form F50 FWC will refund the filing fee, where paid.

Note: If possible it is a good idea that any monies sent to you by cheque or money order be 'cleared' by the bank before you complete this form.

Action: Complete the 'Form F50 – Notice of Discontinuance' – (see Appendix)

What happens if the employer has not made an offer, or an acceptable offer, and the matter is going to arbitration?

At this point Job Watch strongly recommends that you seek legal advice and assistance (see the **'Referral options'** section).

Definitions

Applicant (the) - is the person (usually the employee) that has made an Unfair Dismissal application at FWC.

Arbitration - is the formal stage of the Unfair Dismissal process at FWC where a Commissioner hears your Unfair Dismissal application. It is a public hearing (similar to a Court hearing) with formal 'rules of evidence' and often involves Lawyers. A legally binding decision will be made on your Unfair Dismissal application after the arbitration.

Conciliation - is the preliminary stage of the Unfair Dismissal process. It is an informal private and confidential discussion between the parties to the Unfair Dismissal application at FWC. The conciliation will usually be held as a joint telephone conference, or as a 'face-to-face' meeting, and is conducted by an FWC appointed Conciliator that is an employee of FWC. This private and confidential discussion is not bound by formal 'rules of evidence' and the Conciliator has no formal decision making power. The Conciliator can assist the parties to resolve the matter and to formalize the Agreement made between the parties in what is commonly referred to as a Terms of Settlement (or 'Deed of Release') document (see below).

Discrimination - refer to the Australian Human Rights Commission website, or your State's equivalent.

FWC - Fair Work Commission.

General Protections Dispute - refer to the FWC website.

Harsh, unjust and/or unreasonable - see 'harsh, unjust and/or unreasonable' in the Unfair Dismissal information sheet in Appendix.

Legal representation - being represented by a person that is a lawyer i.e. a Barrister and/or Solicitor.

Matter (the) - is the full conduct of the Unfair Dismissal application (from beginning to end).

Notice period - is the period of notice that an employer (or an employee) will usually have to give the other party when seeking to end the employment relationship. This 'notice period' may be expected to be worked out, or 'paid in lieu' if both parties agree that it need not be worked out.

Parties - is a commonly used term to indicate either or both sides of a legal dispute.

Private and Confidential - generally means that whatever is said between the parties within the conciliation cannot be used in evidence at some later point of the proceedings (including at arbitration) so far as the law allows.

Procedural Fairness - is a commonly used term to describe the way in which a termination would usually be fair (procedurally fair) or unfair (procedurally unfair) eg. where the reason(s) for the termination was not 'serious and wilful misconduct' (see below) and where the Respondent did not inform you of the problem it had with you, nor give you a chance to respond (to the Respondent's concerns), nor give you a chance to rectify the perceived or actual problem.

Representative - being assisted by a person that is not a lawyer/legal practitioner i.e. a Union representative, an Industrial advocate, a Human Resource person etc.

Respondent (the) - Your former employer that is defending the allegation of Unfair Dismissal.

Serve - is a formal process for delivering documents on other parties in a legal dispute.

Serious and Wilful Misconduct - where the Applicant was guilty of serious and wilful behaviour that by its very nature essentially severed the employment relationship i.e. where the conduct or behaviour created a serious risk to (for example):

- * The health and safety of any person;
- * The reputation, viability, or profitability of the Respondents business; or
- * Where the matter was of a criminal nature such as theft, fraud, assault etc.

Terms of Settlement (or 'Deed of Release') - is a formal document that establishes the 'terms of settlement' or 'terms of agreement' that have been identified and agreed upon by both parties to resolve the claim.

Note: This document usually allows either the Applicant or the Respondent to take action in a Court of Law if the other party is in breach of this Agreement.

Unfair Dismissal - is an application to FWC using the Form F2 - Application for Unfair Dismissal Remedy.

Workplace Injury - refer to your State or Federal Worker's Compensation Scheme.

Referral options:

JobWatch: (03) 9662 1933 or 1800 331 617

For legal information regarding workplace issues

The FWC Helpline (Fair Work Commission) on 1300 799 675

For Unfair Dismissal forms and general assistance in lodging an Unfair Dismissal application and/or obtaining further information to do with a possible General Protections dispute/termination application.

Note: You can also ring this number or visit the FWC website at www.fwc.gov.au and 'click' on 'Forms' on the home page to obtain current copies of all Unfair Dismissal forms in the Appendix of this kit.

Also take note of the 'Unfair Dismissal Benchbook' on FWC's website regarding relevant case law.

The Fair Work Infoline (Office of the Fair Work Ombudsman) on 13 13 94

For assistance in ascertaining wage rates and general employment entitlement information.

Unions Australia Information Line on 1300 486 466

For assistance in joining a Union.

The Australian Tax Office on 13 28 61

For assistance with any tax implications on any Unfair Dismissal 'settlement' offer.

For a referral to a lawyer:

Legal Referral Service (Law Institute of Victoria) 03 9607 9311

Queensland Law Society (for referral to a lawyer) 1300 367 757

Law Society of Tasmania (for referral to a lawyer) 03 6234 4133

Appendix

Unfair Dismissal (information sheet)

Constructive Dismissal (information sheet)

Form F2 - Application for Unfair Dismissal Remedy

Form F3 - Employer's Response to Application for Unfair Dismissal Remedy

Form F4 - Objection to Application for Unfair Dismissal Remedy

Form F50 - Notice of Discontinuance

Form F53 - Notice of Representative Commencing to Act

Terms of Settlement document (and explanatory notes)

Notice of Listing

UNFAIR DISMISSAL

If you have been dismissed from your job and you believe it was unfair, you may have grounds to make an Unfair Dismissal claim at Fair Work Commission (**FWC**). If eligible, you have **21 days** from the date your dismissal took effect to file your claim.

What is Unfair Dismissal?

An Unfair Dismissal claim is a claim that your dismissal from employment was:

- harsh, unjust and/or unreasonable; and
- not consistent with the Small Business Fair Dismissal Code (if applicable); and
- not a case of genuine redundancy.

You have been dismissed if:

- your employment has been terminated at the initiative of the Respondent; or
- you resigned from your employment because you were forced to do so because of conduct, or a course of conduct engaged in by the Respondent (constructive dismissal); or
- you were employed under a contract of employment for a specified period or time, task or season and you were terminated prior to the end of the contract.

You have not been dismissed if:

- you were employed under a contract of employment for a specific period of time, task or season and your employment has terminated at the end of the period, season or completion of the task; or
- you were an employee to which a training arrangement applied and your employment was for a specified period of time because of a training agreement and your employment was terminated at the end of the training arrangement; or
- you were demoted in employment but the demotion does not involve a significant reduction in remuneration or duties and you are still employed by the employer who demoted you.

Harsh, unjust and/or unreasonable?

In examining whether a dismissal is harsh, unjust and/or unreasonable, FWC must take into account the following:

- whether there was a valid reason for the dismissal relating to your capacity or conduct (including any effect on the safety and welfare of other employees);
- whether you were notified of that reason;
- whether you were given an opportunity to respond to any reason related to your capacity or conduct;
- any unreasonable refusal by the Respondent to allow you to have a support person present to assist at any discussions relating to dismissal;
- if the dismissal is related to unsatisfactory performance – whether you had been warned about that unsatisfactory performance before the dismissal;

- the degree to which the size of the Respondent's business would be likely to impact on the procedures followed in effecting the dismissal;
- the degree to which the absence of dedicated human resource management specialists or expertise in the business would be likely to impact on the procedures followed in effecting the dismissal; and
- any other matters FWC considers relevant.

Small Business Fair Dismissal Code

A **small business employer** is an employer who employs fewer than 15 employees at the time of the dismissal or at the time you were given notice of the dismissal (whichever happens first). This includes employees employed by **associated entities** of the Respondent.

If you were employed by a small business employer and you were employed for more than twelve months, your dismissal may not be unfair if it was factually consistent with the **Small Business Fair Dismissal Code**.

If immediately before the time of the dismissal or at the time you were given notice of the dismissal (whichever happened first), the employer was a **small business employer** and the employer complied with the **Small Business Fair Dismissal Code** in relation to the dismissal, your dismissal may be considered to be fair.

A fair dismissal can include a dismissal without notice or warning in cases of serious misconduct (for example, theft, fraud or violence) or dismissal for underperformance, provided that you were given a valid reason as to your capacity or conduct, as well as an opportunity to respond, and a reasonable opportunity to rectify the problem.

Genuine redundancy

A genuine redundancy occurs when the Respondent no longer requires the job that you have been doing to be performed by anyone because of changes in the operational requirements of its business. The Respondent must comply with any applicable obligation to consult about redundancy contained in a modern award or enterprise agreement.

It may **not** be considered a genuine redundancy if it would have been reasonable in all the circumstances for you to be redeployed within the Respondent's business or a business of an associated entity of the Respondent.

Can you make an Unfair Dismissal application?

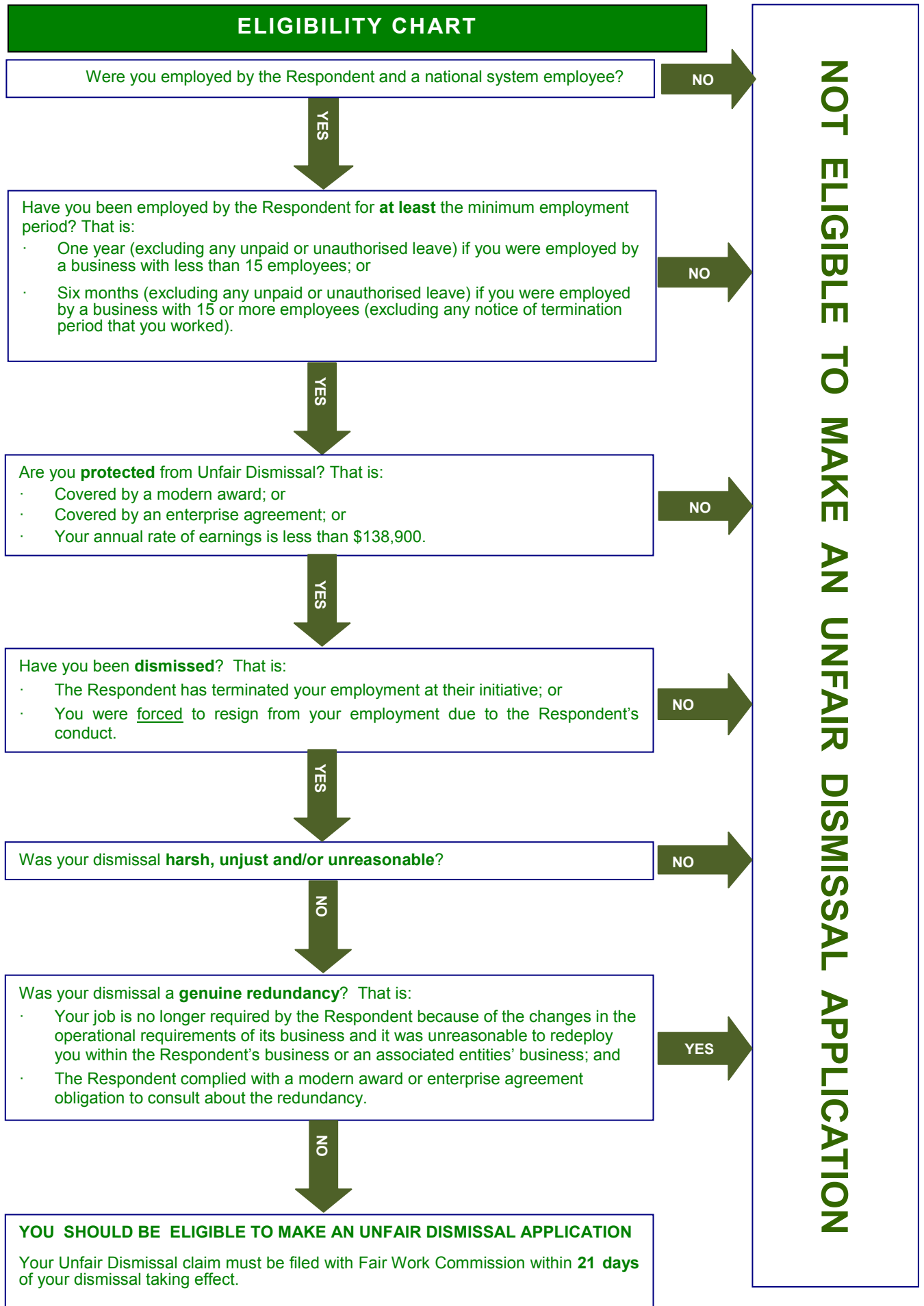
A person who is **protected from Unfair Dismissal** is entitled to make a claim.

You are protected from Unfair Dismissal if you are an employee who has completed a period of employment with the Respondent of at least the minimum period of employment (see '*Further Information*') and one or more of the following also apply:

- you are covered by a modern award;
- an enterprise agreement applies to you in relation to the employment; or
- the sum of your annual rate of earnings and other such earnings, worked out in relation to the employee in accordance with the regulations, is less than the current high income threshold, currently being \$138,900.

Use the chart on the next page to help you work out if you are eligible to make an Unfair Dismissal application

ELIGIBILITY CHART



FURTHER INFORMATION:

Minimum employment period to qualify for Unfair Dismissal protection

The minimum employment period differs between small business employers and other employers.

If the Respondent is not a small business employer, the minimum employment period is **6 months**, ending at the time when the employee was given notice of the dismissal or immediately before the dismissal (whichever occurs first). If the Respondent is a small business employer, the minimum employment period is **1 year** ending at that time.

Period of employment

A period of employment with the Respondent is the period of continuous service which you have completed with the Respondent, as an employee.

For example, if you took 2 months of unpaid or unauthorised leave during your first year of employment with a small business employer then, after 12 months, you will only have 10 months of continuous service with the Respondent.

A period of employment as a casual employee does not count unless the employment was on a regular and systematic basis and there was a reasonable expectation of this regular pattern of work continuing.

A period of service with an old employer will not count towards service with the Respondent if you transfer from another employer to the Respondent (for example, due to a sale of business), so long as the Respondent informed you in writing before you started that the period of service with the old employer would not be recognised.

However, this does not apply where your old employer and the Respondent are associated entities.

Associated Entities

An associated entity is defined by s50AAA of the *Corporations Act 2001* and includes where the Respondent controls or is controlled by another company or individual. This is a very technical area of the law and each particular circumstance will be different.

What remedy do you want?

Once you have established that you are eligible to make an Unfair Dismissal claim, you should think about what you are seeking to resolve your claim. At conciliation, you can seek reinstatement to your position and/or compensation for lost wages.

If your matter is not resolved at conciliation and goes to arbitration and your claim is successful, FWC will consider the option of reinstatement before it considers the option of compensation for lost wages.

If FWC orders reinstatement, you will be reappointed to the position you were in prior to your dismissal or to another position on terms and conditions that are no less favourable than previously. FWC may also order the Respondent to pay you remuneration that you lost because of the dismissal.

If FWC orders compensation, you will be compensated for lost wages in lieu of reinstatement.

Compensation will not be awarded for any shock, distress or humiliation associated with your dismissal and any misconduct by you that contributed to your dismissal will reduce the amount of compensation that may be ordered by FWC.

Compensation Cap

The maximum compensation that may be ordered by FWC is the lower of either:

- \$69,450 which is half the amount of the high income threshold (\$138,900 for full-time employees) immediately before the dismissal; or
- the total amount of income you received or were entitled to (whichever is the higher) during the 26 weeks prior to your dismissal.

In other words, if you earned \$1000 per week in the 26 weeks prior to your dismissal your 'compensation cap' would be \$26,000.

Application Form

The application form for Unfair Dismissal is called a **Form F2 - Application for an Unfair Dismissal remedy**. It is available from Fair Work Commission.

If you need assistance completing the application form, you may contact:

- your union (if you are a member);
- a solicitor; or
- FWC.

You should be aware that FWC is not able to provide you with legal advice.

You must file your claim with FWC. You can do this on-line, by phone, by post, by fax or by personally delivering it to FWA.

A **\$69.60** filing fee is currently required to be paid with your claim.

The filing fee may be waived by FWC if you can show that it would cause your “serious hardship”. To be eligible, you must file the ‘**Application for Waiver of Application Fee**’.

This form must be filed at the same time as (or soon after) you file your Unfair Dismissal claim.

The filing fee will be refunded where you file a Notice of Discontinuance prior to the conciliation. The fee may also be refunded after conciliation has occurred upon filing of a Notice of Discontinuance. This includes situations where the matter is proceeding to arbitration. However, the Notice of Discontinuance must be filed at least two days prior to the date of arbitration.

What happens next?

Before FWC can consider the merits of your application, it usually considers whether you have met the minimum employment period.

If the facts of your case are in dispute, FWC must conduct a conciliation in relation to the matter.

FWC may deal with an Unfair Dismissal claim however it considers appropriate. Usually, this will be with a conciliation, and then, if necessary, an arbitration hearing.

Conciliations

All Unfair Dismissal applications are referred to private conciliation. A conciliation is a meeting between you and the Respondent in the presence of a FWC conciliator or over the telephone.

The purpose of the conciliation conference is to bring you and the Respondent together to try and resolve the matter without the need for a formal hearing.

You can agree to settle your claim at any time, even before the conference. If your former employer makes you an offer to settle, it is always advisable to get independent advice so that you are satisfied that the offer is reasonable given the merits of your case.

If a settlement is reached

If you have settled your claim, you may be asked to sign a document called a “*Release Agreement*”, “*Settlement Agreement*”, “*Deed of Release*” or “*Terms of Settlement*” or something similar.

These are legal documents that usually state that:

- you and the Respondent have agreed to settle your claim; and
- in return for reinstatement and/or compensation, you **will not take any further action** against the Respondent in the future over any and all matters arising out of your employment.

Releases often have complicated legal language in them and can be difficult to understand. If you have any doubts about signing one of these documents or if you think you may have other claims against the Respondent, you should obtain legal advice before you agree to settle.

You should file a “**Notice of Discontinuance**” form with FWC once:

- you have settled for an amount of compensation and/or reinstatement; **and**
- you have received the settlement monies; **and**
- the funds have been cleared.

What if a settlement cannot be reached at a conciliation?

If a settlement is not reached at a conciliation, your options are to:

- not continue with your application by filing a notice of discontinuance; or
- wait for the relevant documents to be prepared, or directions to be given by FWC regarding a hearing/ arbitration.

Representing yourself at an arbitration hearing is much more difficult than representing yourself at a conciliation because you need to prove your claim with evidence from witnesses and/or documents. It is recommended that you obtain legal advice before representing yourself at an arbitration hearing.

Costs

Generally, each party pays its own legal costs. However in some circumstances, FWC may, on application within 14 days of the matter being discontinued or determined, make an “*order for costs*” against one of the parties. This can only happen if FWC is satisfied that one of the parties:

- made the claim vexatiously or without reasonable cause; or
- it should have been reasonably apparent that a claim had no reasonable prospect of success.; or
- you unreasonably cause the other party to incur legal costs.

If you are in doubt about the strength of your claim, you should obtain independent legal advice before or shortly after filing your Unfair Dismissal claim. As an applicant, you run the risk of incurring a liability for costs from the moment you make your claim.

Constructive dismissal means that even though your former employer (the Respondent) did not say you were sacked, the Respondent's behaviour forced you to leave your employment. In this situation the termination of your employment is still said to be at the initiative of the Respondent.

CONSTRUCTIVE DISMISSAL

If you wish to take action against the Respondent for constructive dismissal, as part of an Unfair Dismissal claim, you must be able to show that your employment was terminated '*at the initiative of the employer*', not because you decided to voluntarily resign.

If the Respondent tells you that you have been sacked, it is very clear that the termination of your employment was at the initiative of the employer. However, in some cases the Respondent may not have said "you're sacked", but may still have forced you to leave because of the things it said, did or failed to do. That is, the Respondent may have treated you so badly that its conduct fundamentally breached the employment contract between employer and employee, leaving you with no option but to leave the job. This is what is known as a '**constructive dismissal**'.

Constructive dismissal is not a separate legal claim

A constructive dismissal argument can be put as part of an Unfair Dismissal claim. An Unfair Dismissal claim must be filed with Fair Work Commission (FWC) within **21 days** of the termination of your employment taking effect.

A constructive dismissal arises if you can show, on the balance of probabilities that you did not leave your employment voluntarily but rather that you were forced to leave because of the Respondent's conduct. Note, however, that just because you may not like the Respondent's conduct, this does not mean that you will succeed with a constructive dismissal claim. It is a high threshold to show that the Respondent's conduct fundamentally damaged the employment relationship between you and the Respondent giving rise to a constructive dismissal claim.

If you are considering leaving your employment because of the Respondent's conduct, it is a good idea to first obtain legal advice about the likelihood of making a successful claim.

The key to establishing your constructive dismissal argument is being able to show that the Respondent's conduct or course of conduct caused you to leave. You have to be able to show that something that the Respondent did, or failed to do, left you with no other option but to leave your job.

Some examples of conduct on the part of employers which has been found to amount to a constructive dismissal are:

- Repeated failure to pay wages, including the employer unilaterally changing the rate of pay already agreed upon;
- Reducing the responsibilities and duties of an employee who returned from maternity leave;
- Assaulting an employee;
- Failing to properly address a sexual harassment complaint;
- Continued failure to investigate allegations of bullying or to take appropriate steps to protect the employee from the bullying.

Please note: This is a complicated area of law and that these examples may not amount to constructive dismissal in every case

To successfully argue constructive dismissal, you must show that the Respondent's bad conduct was the **principal contributing factor** in the termination of your employment. This can be difficult to show and always depends on the individual circumstances of the case.

What if I resign?

If you agree to resign from your job, you may have weakened your argument for constructive dismissal. However, depending on the exact circumstances of your case, it may be possible to succeed with a constructive dismissal claim if, for example, you can show (i.e. prove) that you only resigned because you were told by the Respondent to choose between resigning or being sacked.

Major changes to your employment contract without your consent may also constitute constructive dismissal

A contract of employment can be written, verbal or a combination of both. Whatever form it takes, this contract reflects the understanding between you and the Respondent about your terms and conditions of employment.

Major changes to your terms and conditions that occur without the consent or agreement of both parties can amount to a breach of contract. If the Respondent has breached your contract in a fundamental way, this may, in certain circumstances, give rise to a constructive dismissal claim.

Note:

- Not all situations involving a variation of your hours will amount to a constructive dismissal.
- If you lose your job because of a genuine redundancy and the Respondent has complied with its obligations to consult and attempt to redeploy you, you are not eligible to make an Unfair Dismissal claim but you may still be entitled to make a different claim (e.g. General Protections Dispute or failure to pay pay instead of notice of termination claim).
- It does not have to be the Respondent's intention to make you leave.

What should I do if I want to argue constructive dismissal?

It is up to **you** to show that the Respondent forced you to leave your job. This can often be very hard to prove. If you make a constructive dismissal claim, you will have to convince independent people hearing your case - who will know nothing about you, the Respondent, your workplace or the sorts of things that went on there - that your employment was terminated "**at the initiative of the Respondent**".

Remember that your version of events will not necessarily be accepted.

You can add weight to your argument by doing the following things:

- Keep a diary of relevant events;
- Act quickly – put your concerns in writing to the Respondent and keep copies of all correspondence;
- Seek legal advice before you leave your job or as soon as possible after you leave remembering that you only have 21 days within which to file an Unfair Dismissal claim; and
- Tell the Respondent in writing why you are leaving, trying to avoid the term "*I resign*" in any correspondence but rather focusing on why you feel that you have no option but to leave.



About the F2 Application Form

Unfair Dismissal

About unfair dismissal

To make an unfair dismissal remedy application to the Fair Work Commission (the Commission), an employee must be covered by the national unfair dismissal laws and must be eligible to make an application. Information about unfair dismissals can be found in the Commission's unfair dismissal guides.

To be eligible to apply, you must have worked for the minimum employment period and, in some cases, earn less than the high income threshold. The Commission's Unfair Dismissal Benchbook has information on each of the eligibility criteria.

When you make your application, you will need to show that:

- you have been dismissed **and**
- the dismissal was harsh, unjust or unreasonable.

This information will assist the Commission in assessing whether your dismissal was unfair.

You cannot make an unfair dismissal application if the dismissal was a case of genuine redundancy.

If you were working for a small business, your employer may object to your application on the grounds that the dismissal was consistent with the Small Business Fair Dismissal Code.

Who can use this form

Use this form if you:

- were an employee covered by the national unfair dismissal laws **and**
- are eligible to make an application for an unfair dismissal remedy **and**
- believe you have been unfairly dismissed.

Lodging your completed form

1. **Lodge your application**, along with any accompanying documents, with the Commission within **21 calendar days** after your dismissal took effect. You can lodge your application by post, by fax or by email or in person at the Commission's office in your State or Territory. You can also lodge online using the Commission's eFiling service at www.fwc.gov.au.

Note: The Commission will provide a copy of your application and any other documents you lodge with the application to the employer.

2. **Pay your application fee** at the same time as you lodge your application. The current application fee is available on the Lodge an application page on the Commission's website www.fwc.gov.au.

If payment of the fee will cause you financial hardship, you can apply to have the fee waived. You must apply to have the fee waived at the same time as you lodge your application. Download the waiver form from the Commission's website.

Where to get help

Commission staff & resources

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

- processes in the Commission
- how to make an application 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 also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

Legal or other representation

Representation is where another person (such as a lawyer, union official or family member) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when you appear at the Commission. You will need the permission of the Commission member dealing with your case if you wish to be represented by a lawyer or paid agent at a conference or hearing unless that person is:

- employed by a union or employer organisation, a peak union or peak employer body, or
- one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

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.

Party—A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent—The person or business 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 for inclusion on the case file, and may disclose this 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.

Form F2—Unfair Dismissal Application

Fair Work Act 2009, s.394

This is an application to the Fair Work Commission for an unfair dismissal remedy in accordance with Part 3-2 of the *Fair Work Act 2009*.

The Applicant



These are the details of the person who is making the application. Please make sure you provide a telephone number for the conciliation conference.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Mobile number			
Email address			

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

Does the Applicant need an interpreter?

- Yes—Specify language
 No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

- Yes— Please specify the assistance required
 No

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, a union or a family member or friend who will speak on behalf of the Applicant. There is no requirement to have a representative.

Yes—Provide representative's details below

No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

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

1. Your employment

1.1 What date did you begin working for your employer?

1.2 What date were you notified of your dismissal?

1.3 What date did your dismissal take effect?

1.4 Are you making this application within 21 calendar days of your dismissal taking effect?

Yes

No

If you answered no to question 1.4—Explain the reason for the delay, including any steps you have taken to dispute the dismissal or any other reason you think the Commission should take into account in considering whether to accept your application out of time.

1.5 Have you made another claim to the Commission or to any other organisation regarding your dismissal (e.g. a general protections application)?



The Commission cannot consider an application for an unfair dismissal remedy if you have made another claim in relation to the dismissal, for example a general protections dispute in relation to the dismissal or a complaint to the Human Rights Commission in relation to the dismissal. If you answered yes to question 1.5, you will need to decide which claim is the most appropriate one. If you're unsure which is the best option for you, read the **where to get help** section in the cover sheet of this form.

Yes

No

2. Remedy

2.1 What outcome are you seeking by lodging this application?

--

3. Dismissal

3.1 What were the reasons for the dismissal, if any, given by your employer?



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

--	--

3.2 Why was the dismissal unfair?

Using numbered paragraphs, describe the relevant facts and circumstances and specify why you say the dismissal was unfair. This should include:

- your response to any reasons for dismissal given by the employer
- whether you were counselled or warned by the employer of any deficiencies in your performance or conduct and the circumstances of each counselling session or warning
- why you believe the dismissal was unfair.

SAMPLE ONLY

Attach additional pages if necessary.

Disclosure of information

The Fair Work Commission will provide a copy of this application and any attachments to the other parties in this matter. This includes:

- The Respondent
- Any legal representatives.

I consent to my contact details being provided to an external provider for the purposes of participating in research. The Fair Work Commission undertakes research with participants in unfair dismissal matters to ensure a high quality process. Some research may be undertaken by external providers on behalf of the Fair Work Commission.

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.

Signature	
Name	
Capacity/ Position	
Date	



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

Application fee

The current application fee is available on the Lodge an application page on the Commission's website www.fwc.gov.au.

The *Fair Work Act 2009* requires a fee to be paid on lodgment of this application with the Fair Work Commission. Where applicable, any refund of the application fee will be forwarded by cheque to the Applicant at the address provided on this application form.

Financial hardship

If paying the fee will cause you financial hardship, you can apply to have the fee waived. If you are applying to have the fee waived you must complete and lodge the Fee Waiver form at the same time as you lodge your application. Note that the Commission will not forward a copy of this form to the Respondent. The Fee Waiver form can be downloaded from the Fair Work Commission website www.fwc.gov.au.

Payment options

I have completed the Fee Waiver form and have attached it to my application.

I am paying by cash—Cash payments can only be made in person at one of the Fair Work Commission offices. Payment should be made at the same time as the application is lodged.

I have attached a cheque or money order to this application— Cheques and money orders should be made payable to the Collector of Public Monies, FWC. Please note that the cheque or money order must be for the exact amount of the application fee, if it is not it may cause the processing of your application to be delayed.

I am paying by credit card—If you are lodging this form in person or by post please provide your credit card details below. The Fair Work Commission does not accept Diners Club or American Express.

Visa

MasterCard

Card number:

Card expiry date:

Cardholder's name:

Signature:

Note: If you are lodging your application by email, **credit card details must not be provided on this form.** Please ensure that you have provided a phone number so that a staff member can contact you and ask for your credit card payment over the phone. You should expect a call within 7 days of the Commission receiving your application.

Payer details

Who is making the payment?

- The Applicant The Applicant's representative Other—Please complete the details

Full name			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Email address	
PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS			



About the F3 Employer Response Form

Unfair Dismissal

About unfair dismissal

To make an unfair dismissal remedy application to the Fair Work Commission (the Commission), an employee must be covered by the national unfair dismissal laws and must be eligible to make an application. Information about unfair dismissals can be found in the Commission's Guide—Unfair Dismissal.

To be eligible to apply, an employee must have worked for the minimum employment period and, in some cases, earn less than the high income threshold. The Commission's Unfair Dismissals Benchbook has information on each of the eligibility criteria.

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

- has the employee been dismissed **and**
- was the dismissal harsh, unjust or unreasonable **and**
- any objection the employer may raise.

You can object to an application for an unfair dismissal remedy on a number of jurisdictional grounds. A jurisdictional objection is not simply that you think the dismissal was fair. For example, you may object because you don't think the employee is eligible to make the application. For more information about objecting to an application please see the Commission's unfair dismissal guides.

If your business is a small business (employing fewer than 15 people) you may be required to show that you have followed the Small Business Fair Dismissal Code.

Who can use this form

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

If you have been served with two or more Form F2 applications for an unfair dismissal remedy 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 you were served with the Form F2 application. You can lodge by post, by fax or by email or in person at the Commission's office in your State or Territory. You can also lodge online using the Commission's eFiling service at www.fwc.gov.au.

2. **Serve a copy of your response and any supporting documents** on the Applicant within **7 calendar days** after you were served with the Form F2 application. You can send this response and supporting documents to 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:

- processes in the Commission
- 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 also contains a range of information that may assist.

Throughout this form



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Legal or other representation

Representation is where another person (such as a lawyer, union official or family member) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when you appear at the Commission. You will need the permission of the Commission member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

- employed by a union or employer organisation, a peak union or peak employer body, or
- one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

Glossary of common terms

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Party—A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent—The person or business 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

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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 unfair dismissal remedy application lodged at the Fair Work Commission in accordance with Part 3-2 of the *Fair Work Act 2009*.

The Applicant



These are the details of the person who is making the application. You can find this information on the application Form F2.

First name(s)	
Surname	
Commission matter number	

The Respondent



These are the details of the business or organisation responding to the application.

Legal name of business			
Trading name of business			
ABN/ACN			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Mobile number			
Email address			
What industry is the Respondent in?			

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

Does the Respondent need an interpreter?



If the Respondent requires an interpreter (other than a friend or family member) in order to participate in conciliation, conference or hearing, the Commission will provide an interpreter at

Yes—Specify language

No

Does the Respondent require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes—Please specify the assistance required

No

Does the Respondent have a representative?



A representative is a person or business who is representing the Respondent. This might be a lawyer, an employer association or a family member or friend who will speak on behalf of the

Yes—Provide representative's details below

No—Go to question 1

Respondent's representative



These are the details of the person or business who is representing the Respondent.

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

1. The Applicant's employment

1.1 Was the Applicant covered by an award or an enterprise agreement?



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

Yes

No

If you have answered yes to question 1.1—Please provide the title of the award or enterprise agreement.

1.2 What date did the Applicant begin working for you?

1.3 What date did you 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 alleged dismissal?

Yes

No

2. Jurisdictional Objections

2.1 Do you have any jurisdictional or other objection(s) to the application?



Jurisdictional objections relate to why an employee is not eligible to make an application to the Commission. An objection is not simply that you think that the employee's dismissal was fair. The Commission's Unfair Dismissals Benchbook has more information on jurisdictional objections.

Yes

No

2.2 On what basis do you object? If you object on multiple grounds you can select more than one from the list below:

- The application is out of time (i.e. 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 (currently \$138,900 per annum)
- The business is a small business, and the dismissal was consistent with the Small Business Fair Dismissal Code

Disclosure of information

I consent to my contact details being provided to an external provider for the purposes of participating in research. The Fair Work Commission undertakes research with participants in unfair dismissal matters to ensure a high quality process. Some research may be undertaken by external providers on behalf of the Fair Work Commission.

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.

Signature	
Name	
Capacity/Position	
Date	



Where this form is not being completed and signed by the Respondent, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS	
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About the F4 Application Form

Unfair dismissal application objections

When to use this form

Use this form if:

- the Fair Work Commission (Commission) has served you with an unfair dismissal application (Form F2), and
- you wish to raise an objection to the application.

You **must** also complete a Form F3 (Employer response to unfair dismissal application). If you have set out your objection in your Form F3, you do not need to complete this Form F4.

If you have been served with two or more Form F2 applications, you can lodge one Form F4 for all the applications if:

- the applications concern the same circumstances, such as where a number of employees were dismissed at the same time, and
- your objection is the same for each application.

If necessary, you can attach details of each individual applicant to whom your objection relates (including name, date of commencement and entitlements) in a separate sheet.

About unfair dismissal objections

You can object to an unfair dismissal application if you believe that:

- the Commission does not have jurisdiction to deal with the matter
- the employee was not protected from unfair dismissal under the *Fair Work Act 2009* (s.382),
- the application was not made within the time required by the *Fair Work Act 2009* (s.394(2)),
- the dismissal was consistent with the Small Business Fair Dismissal Code (s.388), or
- the dismissal was a case of genuine redundancy (s.389).

An objection is not simply that you think the dismissal was fair. For example, you may object because you think the employee is ineligible to make the application.

Making an objection will not stop the unfair dismissal application. Objections must be determined by a Commission Member. The Commission Member may require you and the Applicant to provide evidence and/or submissions with regard to your objections. Evidence may be required in the form of documents, written witness statements, and/or oral evidence at a hearing or conference. Submissions may be required in the form of written submissions and/or oral submissions at a hearing or conference. The Commission Member will issue a formal decision either granting or dismissing the objection. If your objection is granted, the unfair dismissal application will be dismissed, subject to any appeal. If your objection is dismissed, the Commission

-ion will then consider the application for an unfair dismissal remedy. Commission Members may consider some jurisdictional objections at the same time as assessing whether the dismissal was unfair (see Div 5 of the *Fair Work Act 2009*)

For more information about objecting to an application please see the Commission's unfair dismissal guide.

Lodgment and service of your completed form

1. **Lodge this objection form and any supporting documents** with the Commission. You can lodge your application electronically using the Commission's Online Lodgment facility. You can also lodge your application by post, fax or email, or in person at the Commission office in your State or Territory. The addresses are available on our website at www.fwc.gov.a or by calling 1300 799 675.
2. **Serve a copy of your objection and any supporting documents** on the Applicant as soon as practicable after you have lodged the form with the Commission. You can send this objection and supporting documents to 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:

- processes in the Commission
- how to make an application 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.a also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

Legal or other representation

Representation is where another person (such as a lawyer, union official or family member) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when you appear at the Commission. You will need the permission of the Commission Member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

- employed by a union or employer organisation, a peak union or peak employer body, or
- one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

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.

Party—A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent—The person or business 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.

Form F4—Objection to unfair dismissal application


Fair Work Commission Rules 2013, rules 20 and 46

This is an objection to an unfair dismissal remedy application lodged at the Fair Work Commission in accordance with Part 3-2 of the [Fair Work Act 2009](#).

The Applicant

	These are the details of the person who is making the unfair dismissal application. You can find this information on the application Form F2.
First name(s)	
Surname	
Commission matter number	

The Respondent

	These are the details of the business or organisation objecting to the unfair dismissal application.	
First name(s)		
Surname		
Postal address		
Suburb		
State or territory	Postcode	
Phone number	Fax number	
Email address		

If the respondent is a company or organisation please also provide the following details

Legal name of business	
Trading name of business	
ABN/ACN	
Contact person	

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

Signature

Do you have a representative?



A representative is a person or business who is representing you. This might be a lawyer, a representative from an employer association or a family member or friend who will speak on

Yes—Provide representative's details below

No—Go to question 1

Note: if you have provided details of a representative in the Form F3—Employer Response Form and the details have not changed, you do not need to provide these details again. Please go to question 1.

Respondent's representative



These are the details of the person or business who is representing you.

Name of person		
Organisation		
Postal address		
Suburb		
State or territory		Postcode
Phone number		Fax number
Email address		

1. Objections

1.1 On what basis do you object to the application? If you object on multiple grounds you can select more than one from the list below:

The application is out of time (i.e. lodged more than 21 days after the dismissal took effect) (s.394)

The Applicant was not an employee (s.380)

The Applicant was not dismissed (s.386)

The dismissal was a case of genuine redundancy (s.389)

The Applicant's employment does not meet the minimum employment period (s.383)—Please note the applicant's date of employment and dismissal in question 1.2.

The Applicant's employment was not covered by an award or agreement, and the Applicant earned more than the high income threshold (s.382)

The business is a small business, and the dismissal was consistent with the Small Business Fair Dismissal Code (s.388)

Other (please provide details):


1.2 Explain why you object on the grounds selected above

SAMPLE ONLY

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.

Signature	
Name	
Date	
Capacity/ Position	
	Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the Capacity/Position section.
PLEASE RE- TAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS	



About the F50 notice

Discontinuing a matter

If you have made an application to the Fair Work Commission (the Commission) you may choose to discontinue the application at any time. You may choose to discontinue an application for a number of reasons including:

- the matter has settled
- you wish to withdraw the application
- you no longer require the Commission to deal with the application.

You can discontinue a matter in a number of ways including:

- lodging this form with the Commission
- advising the Commission in writing by letter, email or fax
- advising the Commission by telephone
- advising the Commission in the course of a hearing or conference.

Lodgment and service of your completed form

1. **Lodge this notice of discontinuance** with the Commission. You can lodge by post, by fax or by email or in person at the Commission's office in your State or Territory. You can also lodge online using the Commission's eFiling service at www.fwc.gov.au.
2. **Serve** a copy of this notice on the Respondent who is named in this notice **as soon as practicable** after lodgement with the Commission.

Where to get help

Commission staff & resources

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

- processes in the Commission
- how to make an application 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 also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

Legal or other representation

Representation is where another person (such as a lawyer, union official or family member) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when you appear at the Commission. You will need the permission of the Commission member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

- employed by a union or employer organisation, a peak union or peak employer body, or
- one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

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.

Party—A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent—The person or business 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.

Form F50—Notice of discontinuance

Fair Work Act 2009, s588; Fair Work Commission Rules 2013, rule 10 and Schedule 1

This is a notice of discontinuance of an application with the Fair Work Commission in accordance with section 588 of the [Fair Work Act 2009](#).

Fair Work Commission matter number

Matter number	
----------------------	--

The Applicant

First name(s)	
Surname	


The Respondent


Contact person	
Legal name of business	
Trading name of business	

The Applicant:

- Wholly discontinues this matter
- Wholly discontinues this matter as part of a settlement agreement
- Wholly discontinues this matter to pursue an alternate application

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
Signature	
Name	
Capacity/Position	

Date		
	Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the Capacity/Position section.	
PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS		



About the F53 application form

Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this 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.

Form F53 Notice of representative commencing to act

Fair Work Commission Rules 2013, Rule 11

FAIR WORK COMMISSION

Commission Matter No.:

[Insert the Commission matter number appearing on the main application form, if known.]

Applicant:

[Insert name of Applicant from main application.]

Respondent(s):

[Insert name of Respondent from main application.]

Take Notice that:

Name:		
	Title [if applicable] Mr [] Mrs [] Ms [] Other [] specify:	
Address:		State:
Suburb:		Postcode:
Telephone:		Mobile:
Fax:		Email:

Now acts for [insert party] and may seek leave to represent such party before the Fair Work Commission.

Date:	
Signature:	
Name:	
Capacity/Position:	

Service requirements

This notice must be served on the other party or parties to the proceeding as soon as practicable after the document is lodged with the Commission.

Note: Parts 7 and 8 of the *Fair Work Commission Rules 2013* deal with service.

This is an example of a common Unfair Dismissal settlement document that may be provided at conciliation by the Conciliator when you and your former employer agree to settle your Unfair Dismissal claim.

It is not the best nor the only settlement document that can be used as terms may be added, removed, or amended as agreed between the parties.

The purpose of this document is to help you better understand the meaning of terms that are usually used in Unfair Dismissal settlement documents.

Case No: _____

In the matter of

(YOUR NAME)

(Applicant)

and

(YOUR FORMER EMPLOYER'S NAME)

(Respondent)

Terms of Settlement

1. The Applicant has made an application to Fair Work Commission for a remedy alleging the Applicant was protected from Unfair Dismissal and was unfairly dismissed.

(This means that you have made an Unfair Dismissal application that claims that you were unfairly dismissed by your employer).

2. The Respondent denies the allegations.

(This means that your former employer doesn't necessarily believe that it unfairly dismissed you but is willing to compromise to settle your Unfair Dismissal claim to avoid the cost and inconvenience of further legal proceedings).

3. The Applicant and the Respondent agree to fully and finally settle the matter on the following bases:

("Fully and finally" means that you can't continue your Unfair Dismissal claim or make another Unfair Dismissal claim against your former employer).

- 3.1 The Respondent will pay the Applicant the amount of \$X,XXX (gross) taxed according to law within 14 days of receiving this document signed by or on behalf of the Applicant.

(This means that you have to sign this 'Terms of Settlement' before an adult witness and send the original to your former employer, preferably by registered post (Note: Keep a copy for yourself). The payment to you will usually be 'taxable'. Currently, Employment Termination Payments are usually taxed at the rate of 31.5% however you may want to call the Australian Tax Office (see 'Referral options' to check the tax related issues of any payment offered)).

- 3.2 The Respondent will, within 14 days of receiving this document signed by or on behalf of the Applicant, provide the Applicant with a Statement of Service with the Respondent, outlining the Applicant's period of service with the Respondent, the Applicant's position with the Respondent and the Applicant's duties for the Respondent.

(A statement of service is a neutral statement by your former employer, usually on its letterhead, outlining your length of service, duties and position. You may ask your former employer to provide you with a positive reference instead of a neutral statement of service. However, some employers may not be prepared to do this. If this is the case, it can be a good idea to have a personal reference from a co-worker to help you get a new job).

- 3.3 On the Respondent complying with clauses 3.1 and 3.2 above, the Applicant releases and forever discharges and releases the Respondent, its Directors, employees, assignees or successors from any liability past, present or future from all claims, suits, demands, actions or proceedings arising out of or connected with the Applicant's employment with the Respondent, including but not limited to the cessation of the employment.

(This means that, in agreeing to accept a payment/settlement from your former employer to resolve your Unfair Dismissal claim, you are also agreeing not to make any further claims (e.g. take legal action) in relation to your employment whatsoever against your former employer, its owners and its staff etc and to discontinue any other claims you have already started. If you think you may have other claims against your former employer that you wish to pursue such as, for example, an underpayment of wages claim or an unlawful discrimination claim, then you may not want to agree to this clause. Instead, you may only want to settle your Unfair Dismissal claim and nothing else. If the Respondent doesn't comply with clauses 3.1 or 3.2 you may be able to continue your claim/s but obtain legal advice first).

- 3.4 The Respondent releases and forever discharges and releases the Applicant from any liability past, present or future from all claims, suits, demands, actions or proceedings arising out of or connected with the Applicant's employment with the Respondent, including but not limited to the cessation of the employment.

(This means that your former employer agrees not to take any legal action against you in relation to your employment. This can be important where your former employer has made allegations against you such as, for example, that you still have its property or that you have somehow harmed its business causing it loss and damage).

- 3.5 Nothing in the provisions of these terms of settlement affects any entitlement the Applicant has under workers compensation legislation or superannuation legislation.

(Regardless of paragraph 3.3, you are still entitled to make a WorkCover and/or an unpaid Superannuation claim. If you have other claims in relation to personal injury or otherwise e.g. common law, you should obtain legal advice before agreeing to any terms of settlement).

- 3.6 The Applicant and the Respondent will keep the provisions of these terms of settlement, and any information relating to the employment, confidential, provided that they may disclose the provisions to their legal or financial advisers or any other person that by law must be informed of the provisions.

(This means you have agreed to not tell anyone, especially other employees or former employees of your former employer, anything about your Unfair Dismissal claim and its outcome. If you break this agreement, your former employer may take legal action against you. However, you can tell your legal and financial advisors).

3.7 Neither the Applicant nor the Respondent will disparage or denigrate the other.

(This means that you and your former employer have agreed not to say or write anything to any other person that is insulting or critical of each other. This can help you if you are concerned that your former employer may disparage or denigrate you in the context of any future/prospective employer's contact with them).

3.8 Within 7 days of the Respondent complying with clauses 3.1 and 3.2, the Applicant will file a Notice of Discontinuance.

(This means that you agree to file a Notice of Discontinuance (Form F50) at the Fair Work Commission within 7 days of you receiving the payment, your statement of service, and anything else that has been agreed upon herein. It is a good idea to make sure any payments made are 'cleared' prior to completing the Form F50. Completion of this form will finalise your Unfair Dismissal claim).

4. This agreement will be taken as being executed when each party holds a copy signed by the other party, even though the signatures of both parties do not appear on the same copy.

(This means that, if you have a copy of this document signed by your former employer and you have sent your former employer a copy signed by you, then the document has been completed).

SIGNATURES

Signed on behalf of/by the Applicant this

Signed by the Respondent this

Signature:

Signature of the representative of the respondent:

Name of applicant

Name of the representative of the respondent:

Signature of the witness:

Signature of the witness:

Name of witness:

Name of witness:



Notice of Listing

Section:	s.394 - Application for unfair dismissal remedy
Title of Matter:	
Matter Number(s):	

Hearing Details:

The above matter is listed for Conciliation, by Telephone, before a Fair Work Commission Conciliator at:

[date]

Australian Eastern Standard Time

(Vic Time)

NOTE:

The parties are to forward contact telephone numbers to Fair Work Commission within 7 days of receipt of this notice.

The parties will be contacted via the telephone numbers they have provided at the time listed above.

The parties do not need to attend at Fair Work Commission.

Any requests for adjournment of this listing must be made in writing and be based on substantial grounds.

Inquiries and contact details:

All inquiries relating to this notice are to be directed to {Your FWC contact person on 1800 759 566, Email UDT@fwc.gov.au or Facsimile (03) 9655 0441.

[date]

Notes:

Important disclaimer

This kit provides general information only. It is not intended to be comprehensive and is not a substitute for professional legal advice.

Readers should not act on the basis of any information contained in this kit without first obtaining professional legal advice that takes into account the particular facts and circumstances of their legal case.

Job Watch Inc. disclaims any liability in respect of any action taken or not taken in reliance upon the contents of this kit.

This information is current at time of printing February 2017.