

Taking General Protections Claims to Court

Fact Sheet

This fact sheet covers:

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- Does the general protections regime apply to me?
 - What are general protections?
 - When can I take my general protections claim to court?
 - Which court should I apply to?
 - How do I apply?
 - What happens next?
 - What orders can the court make?
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This fact sheet provides some information on general protections claims in the Federal Court and Federal Circuit Court.

1. Does the general protections regime apply to me?

Most Australian workers are covered by the general protections provisions. You are covered by the general protections regime if you:

- work for the Commonwealth or a Commonwealth authority;
- work for a constitutional corporation (a financial or trading corporation formed in Australia or a foreign corporation that does business in Australia);
- work in Victoria, the Australian Capital Territory or the Northern Territory (except if you are a law enforcement officer or an executive in the public sector in Victoria, or a member of the Police Force in the Northern Territory);
- work in the private sector in New South Wales, Queensland or South Australia; or
- work in the private sector or local government sector in Tasmania.

For more information, see the Fair Work Commission page on [national workplace relations system coverage](#).

2. What are general protections?

The general protections laws are set out in Part 3-1 of the Fair Work Act 2009 (Cth) (the FW Act).

The FW Act prohibits employers taking adverse action (for example terminating, demoting, warning or reducing the entitlements of an employee) against employees because of their:

- workplace rights;
- industrial activities; or
- race, sex, age, disability and other characteristics (workplace discrimination).

Some of the protections also apply to prospective employees (for example, people participating in a job interview), independent contractors and union members and officers.

For more information on general protections, see the following resources:

- **Fair Work Commission** - <https://www.fwc.gov.au/disputes-at-work/general-protections-unlawful-actions>
- **Fair Work Ombudsman** - <http://www.fairwork.gov.au/about-us/policies-and-guides/fact-sheets/rights-and-obligations/protections-at-work>

IMPORTANT TO NOTE

Please note that you **cannot** make an unfair dismissal claim and a general protections dismissal claim at the same time. Read about the differences between these two claims on the Law Assist [website](#).



3. When can I take my general protections claim to court?

If you want an interim injunction (an order that another party do or stop doing something until your claim is finalised) you can take your claim to court straight away.

In other cases, whether or not you can take your claim straight to court or whether you need to start your claim at the Fair Work Commission (the **FWC**) depends on whether or not you have been dismissed from work.

3.1 Dismissal claims

If you have been dismissed from work, you need to start your claim at the FWC. You must pay a FWC application fee of \$70.60 unless you can demonstrate serious financial hardship. See the FWC's website for guidance on [making an application](#) (Guide 2).

! TIME LIMITS

You must lodge your application **within 21 calendar days** after the dismissal takes effect.

The FWC will try to resolve your dispute by mediation, conciliation, making a recommendation or giving an opinion. Any conference must be conducted in private and they are generally confidential. See the FWC website for further guidance on the [conference process](#).

3.1.1 What if the dispute is not resolved at the Fair Work Commission?

If the FWC's attempts to resolve your dispute are unsuccessful, they will issue you a certificate. The FWC must let you know at this stage if you think you do **not** have a reasonable prospect of success.

Once the FWC has issued a certificate:

- if both parties agree, you can notify the FWC that the parties agree to resolve the dispute by arbitration (see the FWC's website for further guidance on [consent arbitration](#) – Guide 5); or
- if you or the other party does not agree to resolve the dispute by arbitration, you can make an application to court.

! TIME LIMITS

You must notify consent arbitration or make an application to court **within 14 days** after FWC has issued you a certificate.

3.2 Other claims (not dismissal claims)

If your claim involves a kind of adverse action against you that is not dismissal (for example, if an employer has refused to hire you, you have been demoted, or you have been denied a pay increase) then you can choose to:

- make an application to the FWC or
- make an application to court.

3.2.1 Application to the FWC

If you make an application to the FWC and the other party agrees to participate, the FWC will try to resolve your dispute by mediation, conciliation, making a recommendation or expressing an opinion. Any conference must be conducted in private. See the FWC website for further guidance on the [conference process](#).

The FWC must let you know at this stage if you think you do **not** have a reasonable prospect of success.

You can still make an application to court if the FWC is unable to resolve your dispute.

! TIME LIMITS

If you have not been dismissed, you can lodge your application with the FWC **up to six years** from the day the adverse action happened.

3.2.2 Making a court application

In non-dismissal matters, you do not need a certificate from the FWC before making an application to court.

4. Which court should I apply to?

You can apply to either the Federal Court or the Federal Circuit Court.

You should consider starting your case in the Federal Circuit Court because some fees are cheaper, and you may not have to wait as long before your matter is heard by a judge.

! TIME LIMITS

If you have not been dismissed, you can lodge your application with the court **up to six years** from the day the alleged contravention occurred.

4.1 Filing fees for general protection applications

Current fees in the Federal Court are available here: <http://www.fedcourt.gov.au/forms-and-fees/court-fees/fees>. Current fees in the Federal Circuit Court are available here: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/fees-and-costs/fees-gfl/>

Federal Circuit Court	Federal Court
\$615 (NB: if dismissed because of workplace discrimination or unlawful termination: \$70.60)	\$1,290 (NB: if dismissed because of workplace discrimination or unlawful termination: \$70.60)

You may not have to pay the filing fee if you hold certain government concession cards or are suffering financial hardship. More information is available online: <http://www.fedcourt.gov.au/forms-and-fees/court-fees/exemptions>

5. How do I apply?

Step 1: Fill out forms

Federal Circuit Court	Federal Court
<p>You need to fill out 2 forms:</p> <ol style="list-style-type: none">1. Application form2. Claim form: If you have been dismissed, use Form 2. If you have not been dismissed, use Form 4<ul style="list-style-type: none">You can find copies of these forms on the Federal Circuit Court webpage Under 'Industrial Law'.If you have been issued with a certificate in relation to your claim by the FWC, attach this to your claim.	<p>You need to fill out 3 forms:</p> <ol style="list-style-type: none">1. Application form<ul style="list-style-type: none">If you have been dismissed, use Form 79 (this must be accompanied by a certificate issued by the FWC)If you are making a workplace discrimination claim, use Form 81For other claims, use Form 152. Either statement of claim – Form 17 or affidavit – Form 59

<ul style="list-style-type: none"> ○ For detailed examples of contraventions of general protections, see the Fair Work Commission General Protections Benchbook. ○ You can find more guidance on filling out the application form and the claim form on the Law Assist website. 	<ul style="list-style-type: none"> ● You must use a statement of claim if you are claiming damages <p>3. Notice of address for service – Form 10</p> <ul style="list-style-type: none"> ● You can find copies of these forms on the Federal Court website.
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Step 2: File the forms

- You need to file (lodge) your forms with the court registry.
- You need to pay the filing fee when you file your documents.

You can file your forms:

- if filing at the Federal Circuit Court, in person at a Federal Circuit Court registry (you can find addresses and hours of business hours here: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/contact-us/locations>);
- if filing with the Federal Court, in person at a Federal Court registry (you can find addresses and hours of business hours here: <http://www.fedcourt.gov.au/contact>);
- by post, including a cover letter with your contact details and instructions for the court to file your forms; or
- by fax or using the e-lodgement facility (find more information here: <http://www.fedcourt.gov.au/forms-and-fees/filing>).

Step 3: Serve the forms on the other party

Once you have filed your forms, you need to give a copy of the forms stamped by the court to your employer (or other person you are claiming against) so they can respond to your claims.

If your employer is a person, you need to:

- give the forms to them in person; or
- if they won't accept the forms, put them down in their presence and explain what they are.

If your employer is a company, you need to:

- post the forms to the company's registered office (address it to the "Proper Officer");
- take the forms to the registered office and leave it with an employee; or
- hand the forms personally to a director of the company.

You can check the company's registered address by searching the [ASIC Register](#).

TIME LIMITS

For the **Federal Circuit Court**, service must be done **at least 7 days** before the date of the first hearing.

For the **Federal Court**, this must be done **at least 5 business days** before the date of the first directions hearing.

Step 4 (Federal Circuit Court only): let the Court know you have served the forms on your employer

- If you have started your case in the Federal Circuit Court, then once you have served your employer, you need to let the Federal Circuit Court know. Fill in the Affidavit of Service (Fair Work)

form (available on the [Federal Circuit Court website](#)) and take this form in to the court registry. The affidavit must be witnessed by a qualified person (for example, a justice of the peace or a lawyer).

WHAT HAPPENS NEXT?



See our factsheets: **Fair Work Procedures in the Federal Court and Federal Circuit Court** and **Preparing to go to Court**.

6. What orders can the court make?

If the court finds that the general protection provisions of the FW Act have been breached, the court can make any order it considers appropriate, for example:

- issue a fine (a civil penalty);
- make an order for reinstatement (if you have been dismissed);
- make an order awarding compensation for loss;
- grant an injunction or interim injunction; and/or
- award costs (who has to pay the legal fees) – in very limited circumstances.

USEFUL INFORMATION



- Fair Work Commission – [General Protections Benchbook](#)
- Fair Work Ombudsman – [Fact Sheets](#)
- NSW Law Access – [Employment rights](#)
- The Law Handbook (NSW) – [Chapter 22 Employment](#)
- Federal Circuit Court – [Industrial Law](#)
- [Federal Court Rules 2011](#)
- [Federal Circuit Court Rules 2001](#)