## Applicant’s Outline of argument: objections

The respondent (the employer) may formally object to your unfair dismissal application. They will do this if they think that the Fair Work Commission (the Commission) does not have the power to make a decision about your dismissal and should not allow your application to proceed.

The respondent (the employer) can raise an objection in their Form F3—Employer's Response to Application for Unfair Dismissal Remedy (at question 2 on the form) or separately in a Form F4—Objection to Application for Unfair Dismissal Remedy. Check these forms for an objection.

If the respondent (the employer) has objected to your unfair dismissal application, completing this document on the issues the respondent has raised is an important part of preparing for your conference. If the respondent has not raised an objection, **you do not need to complete this document**.

**You should only complete the sections of this document that are relevant to the respondent's objection(s).**

### What is an Outline of argument: objections?

Use this document to respond to the issues raised by the respondent (the employer) in their Form F3, Form F4 or **Outline of arguments: objections**.

This document provides a summary of the facts that are relevant to the Commission Member deciding whether you should be allowed to continue with your unfair dismissal application. This document will help you answer the questions the Commission Member will have about your case.

More information can be found in the Commission's [Unfair Dismissal Guide 5: Objecting to an application](http://www.fwc.gov.au/documents/documents/factsheets/Guide_5_ObjectiontoApp.pdf).

### What to do with your completed Outline of argument: objections?

Once all your documents are completed, make sure you send a copy to both the Commission and the applicant (the employee). The documents should be sent to:

1. The postal or email address of the applicant as set out in their F3—Employer's response to unfair dismissal application, and
2. The postal or email address of the chambers of the Member as set out in the requirements.

On the day of the conference, make sure you bring a copy of all the material that has been lodged by you and the respondent (the employer). Cross-check the information in this document with the information in your **Outline of argument: merits** and **Statement of evidence**.

### Matter details

|  |  |
| --- | --- |
| **Matter number** (e.g. U2015/12345) |  |
| **Applicant** (you, the employee) |  |
| **Applicant’s representative** (if any) |  |
| **Respondent** (the employer) |  |
| **Respondent’s representative** (if any) |  |
| **Date of conference or hearing** |  |

### Index of objections

Check part 2 of the Form F3—Employer's Response to Application for Unfair Dismissal Remedy and read the Form F4—Objection to Application for Unfair Dismissal Remedy submitted by the respondent (the employer).

Identify below which objection(s) the respondent has made and complete the questions in the applicable section(s). If the respondent has raised more than one objection, answer all relevant sections.

|  |  |  |
| --- | --- | --- |
| **Options** | **Tick box** | **Sections** |
| The application was made out of time (the application was not made within the 21 day time limit) | [ ]  | Complete Section 1 |
| You did not serve the minimum employment period (you didn’t work for the employer for 6 months, or 12 months if it was a small business) | [ ]  | Complete Section 2 |
| Your respondent (the employer) is a small business and the dismissal complied with the Small Business Fair Dismissal Code | [ ]  | Complete Section 3 |
| Your dismissal was a case of genuine redundancy | [ ]  | Complete Section 4 |
| You were not dismissed | [ ]  | Complete Section 5 |
| You were not an employee of the respondent (the employer) or the respondent was not your employer | [ ]  | Complete Section 6 |
| Your annual earnings exceeded the high income threshold and you were not covered by a modern award or an enterprise agreement | [ ]  | Complete Section 7 |
| You have already made another application in respect of your dismissal | [ ]  | Complete Section 8 |

### Section 1—The application was made out of time

#### The respondent (the employer) says that the unfair dismissal application was not made within 21 days after the dismissal took effect. **Answer the questions in this section.**

|  |
| --- |
| **About out of time applications** The Commission does not have jurisdiction to hear the merits of an unfair dismissal application that is not lodged within time.The application must be lodged within **21 days** after the dismissal took effect.The Commission may allow a further period for your application if the Commission Member is satisfied that there were ‘exceptional circumstances’ that led to it being lodged out of time.**Related legislation** Section 394(2) and (3) of the *Fair Work Act 2009* |

#### **1a. When were you notified of the dismissal?**(I.e. what date were you told?)

|  |
| --- |
|  |

#### **1b. How were you notified of the dismissal?** (E.g. verbally (face to face, by telephone), letter, text message)

|  |
| --- |
|  |

#### **1c. What date did your dismissal take effect?**

|  |
| --- |
|  |

#### **1d. Did you make your unfair dismissal application within 21 days of when the dismissal took effect?**

#### [ ]  **Yes**—Go to question 1e

[ ]  **No**—Explain below why your application was made more than 21 days after your dismissal

|  |
| --- |
|  |

#### **1e. Did you question or argue against the dismissal after you became aware of it?**

#### [ ]  **No**—Go to question 1f

[ ]  **Yes**—Describe below what you said or did

|  |
| --- |
|  |

#### **1f. Has the respondent (the employer) stated in their response to your application that the lateness of your application has caused them disadvantage or unfairness?**

#### [ ]  **Yes**

[ ]  **No**

#### **1g. Do you agree that the lateness of the application has caused your employer disadvantage or unfairness?**

#### [ ]  **Yes**—Go to question 1h

[ ]  **No**—Provide details below

|  |
| --- |
|  |

#### **1h. Why do you think your dismissal was unfair?** Please use numbered paragraphs or dot points.

|  |
| --- |
|  |

#### **1i. If applicable, describe how you think your situation is more or less fair than the situation of other people in a similar position.**

|  |
| --- |
|  |

*End of Section 1*

### Section 2—The applicant did not serve the minimum employment period

#### The respondent (the employer) says that you, the applicant (the employee), did not serve the minimum employment period. **Answer the questions in this section.**

|  |
| --- |
| **About the minimum employment period** The Commission does not have jurisdiction to hear the merits of an unfair dismissal application if the applicant (the employee) has not completed a minimum employment period of at least **6 months**, or **12 months** in the case of a 'small business' employer. A small business is an employer with **fewer than 15 employees**.Any period of service as a casual does not count when calculating the period of service unless the casual employee was employed on a regular and systematic basis, and during the period of employment the employee had a reasonable expectation of continuing employment on that basis.**Related legislation** Section 384 of the *Fair Work Act 2009*When calculating the number of employees, the count will include the applicant (the employee), anyone else whose employment was terminated at the same time as the applicant, all full-time and part-time employees and casuals who work on a regular and systematic basis. The count includes all associated entities of the business—this may include other businesses that the respondent (the employer) owns.**Related legislation** Section 23 and section 383 of the *Fair Work Act 2009*The period of service must be continuous. Certain periods do not count towards the minimum period of service. These include:* unauthorised absences
* unpaid leave
* unpaid authorised absences.

Where there has been a transfer of business, in some situations service with the first employer may count as service with the second employer.**Related legislation** Section 22 of the *Fair Work Act 2009* |

#### **2a. When did you start working for the respondent?**(I.e. On what date?)

|  |
| --- |
|  |

#### **2b. What date were you given your notice of dismissal?**

|  |
| --- |
|  |

#### **2c. What date did your dismissal take effect?**

|  |
| --- |
|  |

#### **2d. Calculate the period of time from the date you started your employment** (question 2a) **and whichever is the earlier of:**

* **the date you were given notice** (question 2b) **and**
* **the date your dismissal took effect** (question 2c)**.**

|  |
| --- |
|  |

#### **2e. What type of employee were you?**

#### [ ]  **Casual**—Go to question 2f

#### [ ]  **Part-time**—Go to question 2i

#### [ ]  **Full-time**—Go to question 2i

#### [ ]  **A combination or casual and full-time or part-time**—Go to question 2f

#### **2f. How long were you casual for?**(E.g. the whole time you were employed, three months at the start of employment, for the last 12 months of employment. Specify dates.)

|  |
| --- |
|  |

#### **2g. During your time as a casual, were you employed on a regular and systematic basis?**

#### [ ]  **Yes**—Go to question 2h

#### [ ]  **No**—Provide details below

|  |
| --- |
|  |

#### **2h. During your time as a casual, did you expect that you would continue to work on a regular and systematic basis?**

#### [ ]  **Yes**— Go to question 2i

#### [ ]  **No**—Provide details below

|  |
| --- |
|  |

#### **2i. Has the respondent (the employer) stated in their objection that you had any periods of unauthorised absence, unpaid leave or unpaid authorised absences?**

#### [ ]  **Yes**—Go to question 2j

#### [ ]  **No**—Go to question 2k

#### **2j. Do you agree that you had this unauthorised absence, unpaid leave or unpaid authorised absence?**

#### [ ]  **Yes**—Go to question 2k

#### [ ]  **No**—Provide details below. If there were a number of periods, please identify which ones you are referring to.

|  |
| --- |
|  |

#### **2k. Were you employed continuously during your employment with the respondent (the employer)?**

#### [ ]  **Yes**—Go to question 2l

[ ]  **No**—Go to question 2m

**2l. What were your continuous period(s) of employment with the respondent’s business?**(Provide dates, including breaks in service)

|  |
| --- |
| **Related legislation** Section 22 of the *Fair Work Act 2009* |
|  |

#### **2m. Did employment with the business change over time?**(E.g. the business changed hands, your employment transferred from one employer to another, you worked for the business a number of times.)

#### [ ]  **No**—Go to question 2v

#### [ ]  **Yes, there was a transfer of business**—Go to question 2n

#### [ ]  **Yes, there was another kind of change**—Provide details below, then go to question 2v

|  |
| --- |
|  |

#### **2n. Did you transfer from your old employer (first employer) to your new employer (second employer, the respondent) under a transfer of business?**

#### [ ]  **Yes**—Go to question 2o

#### [ ]  **No**—Go to question 2r

#### **2o. What date did your employment with your first employer end?**

|  |
| --- |
|  |

#### **2p. What date did your employment with your second employer (the respondent) begin?**

|  |
| --- |
|  |

#### **2q. What date did your employment with your second employer (the respondent) end?**

|  |
| --- |
|  |

#### **2r. Were the first and second employers associated entities?**

|  |
| --- |
| **Related legislation** Section 50AAA of the [Corporations Act 2001](https://www.legislation.gov.au/Latest/C2022C00149) |

#### [ ]  **Yes**—Go to question 2s

#### [ ]  **No**— Go to question 2t

#### **2s. Explain why you think they were associated entities?**

|  |
| --- |
|  |

#### **2t. Was the work you performed with the first employer the same or substantially the same as the work you performed for the second employer (the respondent)?**

#### [ ]  **Yes**—Go to question 2u

#### [ ]  **No**—Provide details below

|  |
| --- |
|  |

#### **2u. Did the second employer (the respondent) inform in writing before you started employment with them that a period of service with the first employer would not be recognised?**

#### [ ]  **No**

#### [ ]  **Yes**

#### **2v. Has the respondent (the employer) stated that they employed fewer than 15 employees at the time of your dismissal?**

#### [ ]  **No**

#### [ ]  **Yes**

#### **2w. Do you agree that they employed fewer than 15 employees at the time of your dismissal?**

#### [ ]  **No**—End of Section 2

#### [ ]  **Yes**—Go to question 2x

#### **2x. List the names of at least 15 employees who were employed at the time of your dismissal, including their employment status?**

|  |
| --- |
| Include yourself, anyone else whose employment was terminated at the same time as yours, all **full-time**, **part-time** and **casual employees employed on a regular and systematic basis**, including those employees in any related bodies corporate of the respondent’s (the employer’s) business—this may include other businesses that the respondent owns. |

| **No.** | **Name of employee** | **Employment status at the time of your dismissal** (i.e. full‑time, part-time or casuals employed on a regular and systematic basis) |
| --- | --- | --- |
| 1. |  |  |
| 2. |  |  |
| 3. |  |  |
| 4. |  |  |
| 5. |  |  |
| 6. |  |  |
| 7. |  |  |
| 8. |  |  |
| 9. |  |  |
| 10. |  |  |
| 11. |  |  |
| 12. |  |  |
| 13. |  |  |
| 14. |  |  |
| 15. |  |  |

#### **2y. Did you include any casuals in the list at question 2x?**

#### [ ]  **Yes**—Go to question 2z

#### [ ]  **No**—End of Section 2

#### **2z. Explain why you think the casuals listed above were employed on a regular and systematic basis.**

|  |
| --- |
|  |

*End of Section 2*

### Section 3—The respondent (the employer) is a small business and the dismissal complied with the Small Business Fair Dismissal Code

#### The respondent (the employer) says that the business is a small business as defined by the *Fair Work Act 2009* and that the dismissal complied with the Small Business Fair Dismissal Code. **Answer the questions in this section.**

|  |
| --- |
| **About the Small Business Fair Dismissal Code**A dismissal is not unfair if the employee was employed by a small business and the employer has complied with the [Small Business Fair Dismissal Code](https://www.fwc.gov.au/job-loss-or-dismissal/unfair-dismissal/rules-small-business-owners). **Related legislation** Section 23 and section 385 of the *Fair Work Act 2009* |

#### **3a. Do you agree that the business is a small business?**I.e. Did the business have fewer than 15 employees at the time of the dismissal?

#### [ ]  **No**—Go to question 3b

#### [ ]  **Yes**—Go to question 3e

#### **3b. List the names of at least 15 employees who were employed at the time of your dismissal, including their employment status.**

|  |
| --- |
| Include yourself, anyone else whose employment was terminated at the same time as yours, all **full-time**, **part-time** and **casual employees employed on a regular and systematic basis**, including those employees in any related bodies corporate of the respondent’s (the employer’s) business—this may include other businesses that the respondent owns. |

| **No.** | **Name of employee** | **Employment status at the time of your dismissal** (i.e. full‑time, part-time or casuals employed on a regular and systematic basis) |
| --- | --- | --- |
| 1. |  |  |
| 2. |  |  |
| 3. |  |  |
| 4. |  |  |
| 5. |  |  |
| 6. |  |  |
| 7. |  |  |
| 8. |  |  |
| 9. |  |  |
| 10. |  |  |
| 11. |  |  |
| 12. |  |  |
| 13. |  |  |
| 14. |  |  |
| 15. |  |  |

#### **3c. Did you include any casuals in the list at question 3b?**

#### [ ]  **No**—End of Section 3

#### [ ]  **Yes**—Go to question 3d

#### **3d. Explain why you think the casuals listed at question 3b were employed on a regular and systematic basis.**

|  |
| --- |
|  |

#### **3e. Do you agree that the respondent (the employer) complied with the Small Business Fair Dismissal Code?**

|  |
| --- |
| **Related legislation** [Small Business Fair Dismissal Code](https://www.fwc.gov.au/job-loss-or-dismissal/unfair-dismissal/rules-small-business-owners) |

#### [ ]  **Yes**—End of Section 3

#### [ ]  **No**—Provide details below

|  |
| --- |
|  |

*End of Section 3*

### Section 4—The dismissal was a case of genuine redundancy

#### The respondent (the employer) says that the dismissal was a case of genuine redundancy. **Answer the questions in this section.**

|  |
| --- |
| **About genuine redundancy**A dismissal is not unfair if it was a case of genuine redundancy in accordance with the legislation. **Related legislation** Section 385 and section 389 of the *Fair Work Act 2009* |

#### **4a. Did the employer (the respondent) tell you that your job was redundant?**

#### [ ]  **Yes**

#### [ ]  **No**

#### **4b. Do you believe that your employer no longer requires your job to be done by anyone?**

#### [ ]  **Yes**—Go to question 4c

#### [ ]  **No**—Provide details below

|  |
| --- |
|  |

#### **4c. Do you agree that there have been changes in the operational requirements of the business?**

#### [ ]  **Yes**—Go to question 4d

#### [ ]  **No**—Provide details below

|  |
| --- |
|  |

#### **4d. Do you agree that your employer no longer requires your job to be done by anyone because of the changes to the operational requirements of the business?**

#### [ ]  **Yes**—Go to question 4e

#### [ ]  **No**—Provide details below

|  |
| --- |
|  |

#### **4e. Are you covered by an enterprise agreement or a modern award?**

|  |
| --- |
| To find out whether you were covered by a modern award or an enterprise agreement, visit the [Fair Work Ombudsman’s website](http://www.fairwork.gov.au)**.** |

#### [ ]  **No**—Go to question 4g

#### [ ]  **Yes**—Provide details below (E.g. include the full name and identification number of the award or agreement if known)

|  |
| --- |
|  |

#### **4f. Did your enterprise agreement or modern award require your employer to consult with you about the redundancy?**

#### [ ]  **No**—Go to question 4g

#### [ ]  **Yes**—Provide details below  (I.e. Include details of the clause(s) that says that the employer must consult)

#### [ ]  **Not sure**—Go to question 4g

|  |
| --- |
|  |

#### **4g. Do you believe that it would have been reasonable for your employer to have moved you to a different position, either within the same business or in an associated business?**

#### [ ]  **Yes**—Provide details below

#### [ ]  **No**—End of Section 4

|  |
| --- |
|  |

*End of Section 4*

### Section 5—The applicant was not dismissed

#### The respondent (the employer) says that you were not dismissed. **Answer the questions in this section.**

|  |
| --- |
| **About dismissals**The Commission does not have jurisdiction to hear the merits of an unfair dismissal application if, according to the legislation, the applicant has not been ‘dismissed’. **Related legislation** Section 386 of the *Fair Work Act 2009* |

#### **5a. Did you resign?**

#### [ ]  **Yes**—Go to question 5b

#### [ ]  **No**—Go to question 5d

#### **5b. Why did you resign?**

|  |
| --- |
|  |

#### **5c. Describe the circumstances leading up to your resignation, including any conduct by the employer.**

|  |
| --- |
|  |

#### **5d. Why do you say you were dismissed?**

|  |
| --- |
|  |

#### **5e. When did your employment end?**

#### [ ]  **At the end of a period of time specified on a contract**—Provide details below

#### [ ]  **At the end of a specified task**—Provide details below

#### [ ]  **At the end of a season**—Provide details below

#### [ ]  **At the end of a period of a training arrangement**—Provide details below

#### [ ]  **None of the above**—Provide details below

|  |
| --- |
|  |

#### **5f. Were you demoted?**

#### [ ]  **Yes**—Go to question 5g

#### [ ]  **No**—End of Section 5

#### **5g. Did the demotion involve a significant reduction in pay or duties?**

#### [ ]  **No**—End of Section 5

#### [ ]  **Yes**—Provide details below

|  |
| --- |
|  |

*End of Section 5*

### Section 6—The applicant was not an employee, or the respondent was not the applicant’s employer

The respondent (the employer) says that:

* you were not employed by their business or organisation, or
* they were not your employer.

**Answer the questions in this section.**

|  |
| --- |
| **About employers and employees**The Commission does not have jurisdiction to hear the merits of an unfair dismissal application if it was lodged by a contractor because unfair dismissal provisions in the *Fair Work Act 2009* only apply to [national system](https://www.fwc.gov.au/apply-or-lodge/who-australias-national-workplace-relations-system-covers) employees. **Related legislation** Section 380 of the *Fair Work Act 2009*For more information on the differences between employees and contractors, visit the [Fair Work Ombudsman’s website](http://www.fairwork.gov.au).The Commission does not have jurisdiction to hear the merits of an unfair dismissal application if the applicant (the employee) was not employed by the respondent. |

#### **6a. Were you a contractor?**

#### [ ]  **Yes**—Go to question 6b

#### [ ]  **No**—Explain why you believe you were an employee and not a contractor

|  |
| --- |
|  |

#### **6b. Were you a labour hire employee?** (I.e. Were you hired and paid by a labour hire company?)

#### [ ]  **Yes**—End of Section 6

#### [ ]  **No**—Explain why you believe you were not a labour hire employee

|  |
| --- |
|  |

*End of Section 6*

### Section 7—The applicant was not covered by a modern award or an enterprise agreement and he/she earned more than the high income threshold

#### The respondent (the employer) says that you earned over the high income threshold and you were not covered by a modern award or an enterprise agreement. **Answer the questions in this section.**

|  |
| --- |
| **About the high income threshold**The Commission does not have jurisdiction to hear the merits of an unfair dismissal application if the applicant earned more than the high income threshold and was not covered by a modern award or there was no enterprise agreement that applied.To find out whether you were covered by a modern award or an enterprise agreement, visit the [Fair Work Ombudsman’s website](http://www.fairwork.gov.au).**Related legislation** Section 382(b) of the *Fair Work Act 2009* and Regulation 2.13 of the Fair Work Regulations 2009 |

#### **7a. Were you covered by a modern award?**

#### [ ]  **No**—Go to question 7b

#### [ ]  **Yes**—Write the name of the modern award below

#### [ ]  **Not sure**—Go to question 7b

|  |
| --- |
|  |

#### **7b. Was the employee covered by an enterprise agreement?**

#### [ ]  **No**—Go to question 7c

#### [ ]  **Yes**—Write the name of the enterprise agreement below and, if known, include the agreement number

|  |
| --- |
|  |

#### **7c. Were your annual earnings and non-monetary benefits more than the high income threshold per year?**

#### [ ]  **No**—Provide details below

#### [ ]  **Yes**—Provide details below

(Write down what you counted as part of your earnings, including any non-monetary benefits that you counted.)

|  |
| --- |
|  |

*End of Section 7*

### Section 8—The applicant has already made an application in respect of this dismissal

#### The respondent (the employer) says that you have already made an application in respect of the dismissal. **Answer the questions in this section.**

|  |
| --- |
| **About multiple actions**The Commission may not have jurisdiction to hear the merits of an unfair dismissal application if another application has already been made under the *Fair Work Act 2009* or under another law in relation to the dismissal, and the earlier application has not been withdrawn or dealt with.**Related legislation** Section 725 of the *Fair Work Act 2009* |

#### **8a. Have you already made an application to the Fair Work Commission, or another tribunal or court, about your dismissal?**

#### [ ]  **No**—End of Section 8

#### [ ]  **Yes**—Provide details below. Include information about the separate application(s), including which court or tribunal it has been lodged with, and whether or not it has been determined or withdrawn.

|  |
| --- |
|  |

*End of Section 8*

### Legal advice

The Commission cannot provide legal advice.

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

### There are community legal centres in each state and territory. Community Legal Centres Australia legal help page ([clcs.org.au/index.php/findlegalhelp](https://clcs.org.au/index.php/findlegalhelp)) can assist with finding the nearest community legal centre. Please note that Community Legal Centres Australia does not itself offer legal advice.

### Further information

For eligibility information, refer to the Unfair dismissal—Am I eligible to apply? page on the Commission's website ([www.fwc.gov.au/job-loss-or-dismissal/unfair-dismissal/about-unfair-dismissal/check-eligibility-unfair-dismissal](http://www.fwc.gov.au/job-loss-or-dismissal/unfair-dismissal/about-unfair-dismissal/check-eligibility-unfair-dismissal)).

You can also refer to the full set of unfair dismissal guides available on the Unfair dismissal page ([www.fwc.gov.au/job-loss-or-dismissal/unfair-dismissal](http://www.fwc.gov.au/job-loss-or-dismissal/unfair-dismissal)) of our website.

1. Overview of the unfair dismissal laws

2. Flowchart on the process

3. Making an application

4. Responding to an application

5. Objecting to an application

6. Preparing for conciliation

7. Preparing for a conference or hearing

8. Frequently asked questions

9. Glossary of common terms

The Unfair Dismissals Benchbook can also assist parties lodging or responding to unfair dismissal applications ([www.fwc.gov.au/benchbook/unfair-dismissals-benchbook](http://www.fwc.gov.au/benchbook/unfair-dismissals-benchbook)).

If you require further information or help, please refer to the Contact us page on the Commission's website ([www.fwc.gov.au/about-us/contact-us](http://www.fwc.gov.au/about-us/contact-us)).

© Commonwealth of Australia 2022

This guide is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.