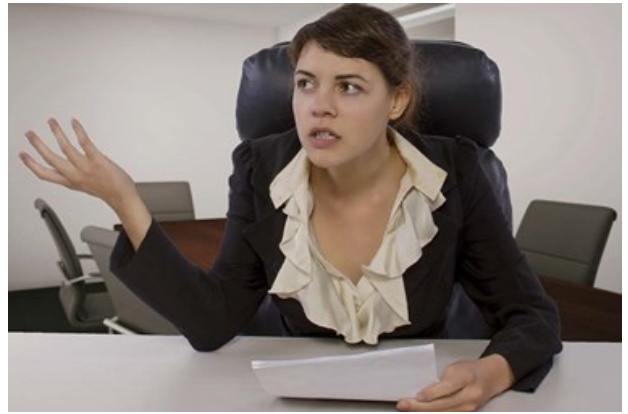




General protections claims involving dismissal/termination of employment

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All employees have general protections under workplace laws in Australia. These laws provide a range of protections against certain actions in the workplace between employers, employees and others. In this article, we look at the process for lodging a general protections claim if you have been dismissed due to adverse action. You can learn more about [general protections and activities which could be deemed adverse action here](#).

General protections are legislated in the *Fair Work Act 2009* and/or State-based legislation. In Queensland, the State-based legislation is the *Industrial Relations Act 2016*.

Note, a general protections claim after dismissal is different to an unfair dismissal claim. This article deals with general protections claims. You can [learn more about unfair dismissal claims here](#).

Timeframes for lodging a general protections claims after dismissal

Where a person has been dismissed, an application to deal with a 'general protections dismissal dispute' must be lodged at the Fair Work Commission ('FWC') by an applicant within 21 calendar days after the dismissal takes effect.

An extension of time can be sought and will only be granted if the FWC is satisfied that there are exceptional circumstances for not lodging the application on time. If a person has been dismissed, that person must commence proceedings at the FWC and cannot bypass the FWC so as to apply directly to the Federal Court or Federal Circuit Court.

What's the first step in the process once a claim has been lodged?

A compulsory conference will be held in an attempt to resolve the dispute. Successful conferences result in settlements which often include:

- a monetary settlement;
- a statement of service;
- payment of owed entitlements;
- an apology;
- the dismissal being treated as a resignation;
- a non-disparagement agreement; and/or
- anything else agreed by the parties.

What are the options if a conference in the FWC is unsuccessful in resolving the dispute?

If a conference is unsuccessful, the FWC will issue a certificate to state that they are satisfied all reasonable attempts to resolve the dispute have been, or are likely to be unsuccessful. If the FWC considers that a claim has no prospects of success, it must also advise the parties accordingly. Alternatively, a further conference may be convened.

Once a certificate is issued, an applicant can make a 'general protections court application' in the Federal Circuit Court or Federal Court. This application must be made within 14 calendar days of the certificate being issued.

Alternatively, the parties can agree to have their matters arbitrated by the FWC.

The arbitration process will only be available if both parties agree to have their matter proceed in this way. At the end of an arbitration, the FWC will make a decision which finalises the matter (subject to an appeal).

The decision is binding on the parties and if a person breaches an order, it can be subsequently enforced through the courts.

What orders can be made by the FWC after arbitration?

The following orders can be made by the FWC at the end of an arbitration:

- orders for the reinstatement of the person;
- orders for the payment of compensation to the person;
- orders for payment of an amount to the person for lost wages;

- orders to maintain a person's employment;
- orders to maintain a period of the person's service.

What if the parties do not agree to going to arbitration?

If the parties do not agree to an arbitration by the FWC and a 'general protections court application' is made, a court (the Federal Court or Federal Circuit Court) will determine whether a general protection provision has been breached. If a provision has been breached, a court may:

- issue a fine;
- make an order for reinstatement;
- make an order awarding compensation for loss;
- grant an injunction or interim injunction;
- award costs.

Get legal help from an employment lawyer

Making or responding to general protections claims can be legally and factually complex. Where a person has been dismissed, immediate action is crucial to ensure the claim has been lodged within the 21-day limit. If you require assistance in making or responding to a general protections claim you should [obtain advice from us](#).

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