



About the F91A response form

Response to an application for an unfair contract term remedy

About unfair contract term remedies

The [Fair Work Act 2009](#) provides for the Fair Work Commission (the Commission) to give a remedy in relation to a **services contract** that includes one or more **unfair contract terms** which, in an employment relationship, would relate to **workplace relations matters**.

If the Commission is satisfied the services contract contains an unfair contract term, the Commission may make an order setting aside, or amending or varying, all or part of the services contract which, in an employment relationship, would relate to a workplace relations matter.

A person who is party to a services contract (or an organisation that represents the industrial interests of a person who is party) is eligible to apply for an unfair contract term remedy, if:

- in the year the application is made, the person's annual rate of earnings is less than the [contractor high income threshold](#), and
- the services contract was entered into on or after 26 August 2024.

When assessing an application for an unfair contract term remedy, the Commission will consider matters including:

- whether the contract is a services contract
- whether the applicant is eligible to make the application
- whether the services contract includes one or more unfair contract terms which, in an employment relationship, would relate to workplace relations matters
- fairness between the parties concerned, and
- any objection the respondent may raise.

A respondent can object to an application for an unfair contract term remedy on a number of jurisdictional grounds. A jurisdictional objection is not simply that the respondent thinks a contract term is not unfair. For example, the respondent may object because it does not think the applicant is eligible to make the application.

For more information about [unfair contract term remedies](#) see the Commission's website.

Who can use this form

Use this form if:

- you have been served with a form F91 – Application for an unfair contract term remedy, and
- the form F91 names you as the Respondent or you are responding for the Respondent

Lodging and serving your completed form

1. Lodge this response form and any supporting documents with the Commission **within 7 calendar days** after the day on which the Respondent was served with the form F91. You can lodge this form by post, by email, or in person at the [Commission's office](#) in your state or territory.
2. Serve a copy of this response form and any supporting documents on the Applicant and their representative (if any), **within 7 calendar days** after the day on which Respondent was served with the form F91.

You can serve documents several ways, including by email, express post or registered post. Part 5 of Chapter 1 and Schedule 1 of the [Fair Work Commission Rules 2024](#) deals with service. Make sure you send the documents to the email or postal address specified in the form F91.

Where to get help

Commission staff & resources

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

- Commission processes
- how to make a response to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person (such as a lawyer, paid agent, union or employer organisation) speaks or acts on a person's behalf or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a [Form F53](#) – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person’s lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person’s behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person, or
- an employee or officer of an employee or employer organisation that is representing the person.

A person can notify the Commission that they have a lawyer or paid agent using this form – provide the lawyer’s or paid agent’s details at ‘Does the Respondent have a representative?’.

If a person needs to notify the Commission that they have a lawyer or paid agent after they have lodged this form, or if they need to ask for permission for a lawyer or paid agent to take part in a **conference or hearing**, use [Form F53](#).

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12, 13 and 14 of the [Fair Work Commission Rules 2024](#), information about [representatives and the rules they must follow](#), and the Commission’s [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – is the person that is making an application.

Jurisdictional objection – is a type of objection a respondent can raise to an application. A respondent can make this kind of objection if they think that the Commission, for a technical or legal reason, cannot hear the matter.

Lawyer – is a person who is admitted to the legal profession by a Supreme Court of a state or territory.

Paid agent – in relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party to a services contract – is a person who has entered into a services contract.

Person – includes an individual and a body corporate.

Respondent – is the person responding to an application made by an applicant.

Service – serving a document means giving a copy of the document to a person, usually to the other party to the matter. You can serve a document in a number of ways, including by email, express or registered post, or in person. Part 5 of Chapter 1, and Schedule 1 of the [Fair Work Commission Rules 2024](#) deal with service.

Services contract – see section 15H of the [Fair Work Act 2009](#).

Unfair contract term – see section 536NB of the [Fair Work Act 2009](#).

Workplace relations matter – see section 536JQ of the [Fair Work Act 2009](#).

Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with the application for an unfair contract term remedy. The information will be included on the case file and the Commission may disclose the information to the other parties to this matter and to other persons. For more details of the Commission’s collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information.

Form F91A – Response to an application for unfair contract term remedy

[Fair Work Act 2009](#) (the Fair Work Act) section 536ND

This is a response to an application to the Fair Work Commission (the Commission) for an unfair contract term remedy under Part 3A-5 of the Fair Work Act.

Case details



These are the details of the application you are responding to (the Application). You can find this information on the form F91 – Application for unfair contract term remedy and correspondence from the Commission about the case.

Name of Applicant	
Commission case number	

The Respondent



These are the details of the party to the services contract that is responding to the Application (the Respondent).

If the Respondent is an individual, provide the following information:

First name(s)			
Surname			
Email address			
Phone number			
Postal address			
Suburb			
State or territory		Postcode	

If the Respondent is not an individual, provide the following information:

Legal name of Respondent	
Respondent's ACN (if a company)	

Respondent's trading name or registered business name (if applicable)			
Respondent's ABN (if applicable)			
Contact person			
Phone number			
Email address			
Postal address			
Suburb			
State or territory		Postcode	

Note: If you provide a mobile number we may send reminders via SMS.

Has the Applicant given the Respondent's correct legal name in the Application?

- Yes
- No – make sure the Respondent's correct legal name is set out above

Do you need an interpreter?



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

- Yes – Specify language:
- No

Do you require any special assistance at the hearing or conference (for example a hearing loop)?

- Yes – Specify the assistance required:
- No

Does the Respondent have a representative?



A representative is a person that is representing the Respondent. The Respondent is not required to have a representative. You can read more about [whether or not to have a representative](#) on our website.

- Yes – Provide the representative’s details below
- No

Representative’s details

Name of person			
Firm, company or organisation			
Email address			
Phone number			
Postal address			
Suburb			
State or territory		Postcode	
<p>Is the representative a lawyer or paid agent?</p> <p>The Respondent will need permission to be represented by a lawyer or paid agent in a conference or hearing. Our lawyers and paid agents practice note explains when you need to ask for permission to be represented.</p>			
<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent		
<input type="checkbox"/> No			

1. Jurisdictional and other objections

1.1 Does the Respondent have any jurisdictional or other objections to the Application?



Jurisdictional objections relate to why an applicant is not eligible to make an application to the Commission. An objection is not simply that you think the contract terms are fair.

- Yes
- No – Go to question 2

1.2 If you answered yes to question 1.1 – What is the Respondent’s objection? (Choose all that apply)

- The contract is not a services contract (see section 15H of the Fair Work Act)
- The services contract was entered into before 26 August 2024
- The person’s annual rate of earnings is not less than the contractor high income threshold (see section 536ND(2) of the Fair Work Act and regulation 1.08AA of the Fair Work Regulations 2009)
- Other review proceedings have been commenced in relation to the services contract and those proceedings have not been discontinued or failed because there was no jurisdiction (see section 734C(3) of the Fair Work Act and regulation 6.01C of the Fair Work Regulations 2009)
- The terms of the services contract the Applicant claims are unfair would not, in an employment relationship, relate to workplace relations matters (see section 536JQ of the Fair Work Act)
- Other

Provide details of any objections. Add additional pages if necessary.

2. Other responses to the Application

2.1 What is the Respondent’s response to the Applicant’s claims at question 2.1 of the Application?



Question 2.1 of the Application asks the Applicant which terms of the services contract are unfair contract terms, what workplace relations matters they relate to and why are they are unfair.

Section 536NB lists the matters the Commission may take into account in determining whether a term of a services contract is an unfair contract term.

Provide a brief response to the Applicant’s claims in relation to each term.

Contract term the Applicant claims is unfair	Respondent’s response

Add additional pages if necessary.

2.2 What is the Respondent’s response to the unfair contract term remedy the Applicant has proposed at question 3.1 of the Application?



Question 3.1 of the Application asks what parts of the services contract the Applicant wants the Commission to set aside, amend or vary.

In deciding whether to make an order and the kind of order to make, section 536NA(3) of the Fair Work Act requires the Commission to take into account fairness between the parties concerned.

Provide details of the response. Add additional pages if necessary.

2.3 Are there any other matters the Respondent wants to bring to the Commission’s attention?

Yes

No

If you answered yes, describe the matters below.

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Disclosure of information

The Commission may provide a copy of this response and any attachments to the other parties to this matter. This includes:

- the Applicant, and
- any representatives.

Authority to sign and signature



For ‘Authority to sign’:

- If you are the Respondent – insert ‘Respondent’
- If you are an employee or officer of the Respondent – insert your position title
- If you are the Respondent’s representative and have provided your details in this form – insert ‘Representative’.

Authority to sign	
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	
Name	
Date	

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS