



About the F91 application form

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.

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

When to use this form

Use this form to apply to the Commission for an unfair contract terms remedy.

This form may be used by a person who is party to a services contract, or an organisation that represents the industrial interests of a person who is party, where:

- 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.

Lodging your completed form

1. Lodge this application form and any supporting documents with the Commission.

If the services contract is in writing, you must lodge a copy of the contract with this application.

You can lodge this application by email, by post or in person at the [Commission office](#) in your state or territory.

2. Pay the application fee at the same time as you lodge this application. The current application fee is available on the [Lodge an application](#) page on the Commission's website.

If paying the fee will cause you serious 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.

When the Commission sends a copy of your application to other people involved in the case, we will not include information about the application fee.



We will send a copy of this form (and any other documents you lodge with it) to the other people in this case.

This includes:

- the respondent, and
- any representatives or paid agents involved in the case.

This is so they can understand your side of the case. We will ask them for their side of the case as well.

If you are worried about particular information being passed on, don't include it yet. Lodge your completed form and then contact us to talk about whether you should provide the information.

You can find out more about [keeping the case confidential](#) on our 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 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 Applicant 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 or business responding to an application made by an applicant.

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 F91 – Application for an unfair contract term remedy

Fair Work Act 2009 (the Fair Work Act) section 536ND

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

The Applicant



The Applicant is the person making this application.

The Applicant is (choose one of the following):

- A party to a services contract who wants an unfair contract term remedy
- An organisation that represents the industrial interests of a party to a services contract

If the Applicant is an organisation that represents the industrial interests of a party to a services contract, provide the following information:

Legal name of organisation			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

The Party who wants an unfair contract term remedy



These are the details of the party to the services contract who wants an unfair contract term remedy (the Party).

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

First name(s)	
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Surname			
Email address			
Phone number			
Postal address			
Suburb			
State or territory		Postcode	
Party's age	<input type="checkbox"/> 18 years or over (adult)		
	<input type="checkbox"/> Under 18 years		

Note: If the Party is under 18 years of age, the Commission encourages them to have a parent or guardian, or a legal representative, involved. We can provide further information about how to find legal services.

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

Legal name of Party			
Party's ACN (if a company)			
Party's trading name or registered business name (if applicable)			
Party's ABN (if applicable)			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	

Phone number	
Email address	

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

Do you need an interpreter?



If you are having 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 need any special assistance at the hearing or conference (for example a hearing loop)?

Yes – Specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or organisation that is representing the Applicant. The Applicant 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



These are the details of the person that is representing the Applicant (if any).

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 Applicant 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			

The Respondent



These are the details of the other party to the services contract, who will be responding to this application (the Respondent).

Note that the Commission will send a copy of this application to the Respondent or contact person you name below.

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	

1. Preliminary

1.1 What is the industry of the principal to the services contract?



The **principal** is the party that receives services under the services contract.

1.2 Is the person’s annual rate of earnings less than the contractor high income threshold?



This application can only be made if the person’s annual rate of earnings is 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*.

Yes

No – Seek advice before lodging this application

1.3 Was the services contract entered into on or after 26 August 2024?



This application can only be made if the services contract was entered into on or after 26 August 2024.

If the services contract is in writing, you must lodge a copy of the contract with this application.

Yes – Specify the date the services contract was entered into

No – Seek advice before lodging this application

1.4 Have any other review proceedings been commenced?



Section 734C of the Fair Work Act provides that this application must not be made if other review proceedings have been commenced in relation to the services contract, unless those proceedings have been discontinued or have failed because there was no jurisdiction.

See section 734C(3) and regulation 6.01C of the *Fair Work Regulations 2009* for the meaning of *other review proceedings*.

Yes – Seek advice before lodging this application

No

2. The unfair contract terms

2.1 Which terms of the services contract are unfair contract terms, what workplace relations matters do they relate to and why are they unfair?



Section 536NA of the Fair Work Act provides that the Commission may make an order giving an unfair contract remedy if satisfied that the services contract includes one or more unfair contract terms which, in an employment relationship, would relate to workplace relations matters.

Section 536NB lists the matters that the Commission may take into account in determining whether a term of a services contract is an unfair contract term. Section 536JQ defines *workplace relations matters*.

The unfair contract term	The workplace relations matter that the term relates to	Why the term is unfair

Add additional pages if necessary.

3. The unfair contract term remedy

3.1 What parts of the services contract does the Applicant want the Commission to set aside, amend or vary?



Section 536NC of the Fair Work Act provides for the unfair contract term remedy. 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.

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

Add additional pages if necessary

Disclosure of information

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

- the Respondent, and
- any representatives.

Authority to sign and signature



For 'Authority to sign':

- If you are the Applicant – insert 'Applicant'
- If you are officer or employee of the Applicant – insert your position title
- If you are the Applicant'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

Application fee

Your name:

The current application fee is available on the [Fees and costs](#) page on the Commission’s website.

The *Fair Work Act 2009* requires a fee to be paid on lodgment of this application with the Commission. Where applicable, any refund of the application fee will be forwarded by cheque to you 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 the Fee Waiver form to the employer. The [Fee waiver form](#) can be downloaded from the Commission’s website.

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 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 – Please see below:

If paying by credit card, please provide the payer details below and a Commission officer will contact the payer within 3 business days from the date of lodgment.

Payer details

Who is making the payment?

- You Your representative Other – Please complete the details below

Full name of payer			
Postal address			
Phone number		Email address	

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS