

	Unfair dismissal	General protections (dismissal)	General protections (no dismissal)	Discrimination – State	Discrimination – Federal
Initial complaint to	Fair Work Commission (FWC)	Fair Work Commission (FWC)	Fair Work Commission (FWC)	Anti-Discrimination Commission Qld (ADCQ)	Australian Human Rights Commission (AHRC)
Relevant legislation	Fair Work Act 2009 (Cth)	Fair Work Act 2009 (Cth)	Fair Work Act 2009 (Cth)	Anti-Discrimination Act 1991 (Qld)	Disability Discrimination Act 1992 (Cth)
Complaint form	Form F2	Form F8	Form F8C	ADCQ complaint form	AHRC online complaint form
Application fee	\$68.60 (waiver available in some circumstances)	\$68.60 (waiver available in some circumstances)	\$68.60 (waiver available in some circumstances)	No fee	No fee
Time limit	21 days from date of dismissal	21 days from date of dismissal	Must lodge court application within 6 years from date of adverse action. NB if dismissed, 21 day time limit	One year from date discrimination commenced	One year from date discrimination commenced
Process if no settlement at conciliation conference at commission	Remains in FWC throughout. FWC will schedule a conference or hearing if the matter does not resolve.	<p>If the matter is not resolved at the Conciliation a certificate will be issued. Once the certificate is issued you have a choice to make an Application to the Federal Circuit Court (FCC) or Federal Court or to have the matter Arbitrated by the Commission (by agreement between both parties).</p> <p>You must make an Application to the FCC or Federal Court or elect for the matter to be arbitrated within the FWC within 14 days of the Certificate issuing.</p>	<p>In non-dismissal disputes, the Commission will hold a conference to deal with the dispute only if both parties agree to participate.</p> <p>If a dispute doesn't involve a dismissal and the dispute is not resolved during the conference, if the Commission considers that an application to either Court would not have a reasonable prospect of success, it must advise the parties accordingly.</p> <p>If the matter is not resolved at the Conciliation Conference a certificate will be issued. Once the certificate is issued you have a choice to make an Application to the Federal Circuit Court (FCC) or Federal Court</p>	Complainant can require anti-discrimination commissioner in writing to refer matter to Queensland Civil and Administrative Tribunal (QCAT) within 28 days of notification that complaint cannot be resolved by conciliation.	Must file application in the FCC within 60 days of notice terminating complaint issuing from AHRC

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Forum for hearing if no settlement at commission and fees	Stays at Fair Work Commission (no further filing fee)	Arbitration within the FWC by agreement OR FCC or Federal Court. FCC (\$600 fee – exemption available in some circumstances)	If a conference wasn't held, the applicant can choose to make an application directly to the Federal Circuit Court or the Federal Court. The applicant does not require a certificate from the Commission to do this. FCC (\$600 fee – exemption available in some circumstances)	QCAT (no filing fee)	Federal Circuit Court (FCC) (\$600 fee – exemption available in some circumstances)
Legal representation for hearing	Must apply for leave to be legally represented. Leave is only available if: <ul style="list-style-type: none"> it would enable the matter to be dealt with more efficiently taking into account the complexity of the matter; it would be unfair not to allow representation given the person's ability to self-represent, including consideration of language or literacy; it would be unfair taking into account fairness between the person and other persons in the same matter 	You do not have to ask permission to have a lawyer represent you	You do not have to ask permission to have a lawyer represent you	Leave must be obtained in QCAT if it is in the interests of justice taking into account: <ul style="list-style-type: none"> whether the state is a party; complexity of fact or law; whether other party represented; whether other party consent. 	You do not have to ask permission to have a lawyer represent you

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Remedies	<ol style="list-style-type: none"> 1. Reinstatement to job OR 2. If reinstatement is not appropriate, compensation can be ordered, but it is limited to 26 weeks wages or half the high income threshold amount (i.e. half of \$136,700), whichever is lower. <p>There is <u>no</u> claim for shock, distress and/or humiliation in unfair dismissal claims. .</p>	<ol style="list-style-type: none"> 1. Compensation (no limit on amount); 2. Reinstatement (more likely in cases involving a large organisation); 3. Compensation for pain and suffering; 4. Payment of unpaid entitlements; 5. Interest (not in relation to a penalty); and 6. Pecuniary penalties (up to \$51,000 per breach for companies and \$10,200 for individuals) 	<ol style="list-style-type: none"> 1. Compensation (no limit on amount); 2. Reinstatement (more likely in cases involving a large organisation); 3. Compensation for pain and suffering; 4. Payment of unpaid entitlements; 5. Interest (not in relation to a penalty); and 6. Pecuniary penalties (up to \$51,000 per breach for companies and \$10,200 for individuals) 	<ol style="list-style-type: none"> 1. Order to stop breaching the Act 2. Pay a sum of money for loss or damage (includes the offence, embarrassment, humiliation, and intimidation you suffered, economic loss (like lost wages), out of pocket expenses (like cost of counselling) and interest) – no limit on amount 3. Do things to redress loss or damage, such as employing, reinstating or re-employing you or promoting you to a specified position 4. A public or private apology 5. Implementation of programs to eliminate unlawful discrimination 	<ol style="list-style-type: none"> 1. an order declaring that the respondent has committed unlawful discrimination and directing the respondent not to repeat or continue such unlawful discrimination; 2. an order requiring a respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by an applicant (no limit on amount); 3. an order requiring a respondent to employ or re-employ an applicant; 4. an order requiring a respondent to pay to an applicant damages by way of compensation for any loss or damage suffered because of the conduct of the respondent; 5. an order requiring a respondent to vary the termination of a contract or agreement to redress any loss or damage suffered by an applicant; 6. an order declaring that it would be inappropriate for any further action to be taken in the matter.

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Costs	<p><u>Generally parties bear their own costs</u> unless the matter was without merit or brought vexatiously.</p> <p>This is a major benefit for Fair Work matters compared with other sorts of actions (including AHRC matter) going to the Federal Court system.</p>	<p><u>Generally parties bear their own costs</u> unless the matter was without merit or brought vexatiously.</p> <p>This is a major benefit for Fair Work matters compared with other sorts of actions (including AHRC matter) going to the Federal Court system.</p>	<p><u>Generally parties bear their own costs</u> unless the matter was without merit or brought vexatiously.</p> <p>This is a major benefit for Fair Work matters compared with other sorts of actions (including AHRC matter) going to the Federal Court system.</p>	<p>Generally parties bear their own costs unless the interests of justice favour the making of such a costs order e.g. if a party who does not comply with QCAT directions.</p>	<p><u>If a person is not successful in the Federal Circuit Court for a matter coming out of the AHRC they would normally be ordered to pay the legal costs of the successful other party.</u></p> <p>This is usually considered a downside for self-represented people but a benefit to a person who has a lawyer and wants to be able to recover the costs of that lawyer if they win.</p>
More than one reason for adverse action/ less favourable treatment?	N/A	The prohibited reason must be a <u>substantial and operative reason</u> .	The prohibited reason must be a <u>substantial and operative reason</u> .	The impairment must be a <u>substantial reason</u> for the less favourable treatment	Your disability need only have been <u>one of the reasons</u> for the less favourable treatment
Burden of proof	You must prove that the dismissal was harsh unjust or unreasonable within the meaning under the Fair Work Act.	<p>You generally need to establish that you:</p> <ol style="list-style-type: none"> 1. Have had adverse action taken against you; & 2. You have an attribute on the list of protected attributes. <p>The employer then has the obligation (called the 'onus') of proving that the adverse action was NOT because of a prohibited reason.</p> <p>This is a key benefit of the FWC process because it forces the employer to prove what is traditionally the trickiest bit of an anti-discrimination action.</p>	<p>You generally need to establish that you:</p> <ol style="list-style-type: none"> 1. Have had adverse action taken against you; & 2. You have an attribute on the list of protected attributes. <p>The employer then has the obligation (called the 'onus') of proving that the adverse action was NOT because of a prohibited reason.</p> <p>This is a key benefit of the FWC process because it forces the employer to prove what is traditionally the trickiest bit of an anti-discrimination action.</p>	You need to prove that the respondent/s breached the Act	You need to prove that the respondent/s breached the Act

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Speed of process	FWC is considered the fastest option	Federal Circuit Court is usually quicker than QCAT	Federal Circuit Court is usually quicker than QCAT	QCAT is considered the slowest option	Federal Circuit Court is usually quicker than QCAT
Compensation amounts	Compensation amounts are lower as there is <u>no</u> claim for shock, distress and/or humiliation in unfair dismissal claims	Compensation amounts tend to be higher in the Federal Circuit Court	Compensation amounts tend to be higher in the Federal Circuit Court	Compensation amounts tend to be lower at QCAT	Compensation amounts tend to be higher in the Federal Circuit Court
Ease of use of court/tribunal	FWC is generally regarded as easier than the Federal Circuit Court particularly in relation to more flexible rules	Federal Circuit Court is generally considered more challenging for self-represented litigants as the rules of the court are more formal.	Federal Circuit Court is generally considered more challenging for self-represented litigants as the rules of the court are more formal.	QCAT is generally regarded as easier than the Federal Circuit Court particularly in relation to more flexible rules	Federal Circuit Court is generally considered more challenging for self-represented litigants as the rules of the court are more formal.
More information	You can also get a lot more information about Unfair Dismissal from the Fair Work Commission website. The Unfair Dismissal Benchbook can be found here: http://benchbooks.fwc.gov.au/unfair/ .	You can get a lot more information about general protections from the Fair Work Commission website. If you are proceeding into this jurisdiction without a lawyer, we strongly recommend the General Protections Benchbook which you can find at this link. http://benchbooks.fwc.gov.au/generalProtections/ .	You can get a lot more information about general protections from the Fair Work Commission website. If you are proceeding into this jurisdiction without a lawyer, we strongly recommend the General Protections Benchbook which you can find at this link. http://benchbooks.fwc.gov.au/generalProtections/ .	You can get further information about the ADCQ and the form you need if you want to complain to them from their website which is at http://www.adcq.qld.gov.au/ .	You can get further information about the AHRC and the forms you need from their website which is at https://www.humanrights.gov.au/ .