## Respondent’s Statement of evidence

An **unfair dismissal conference** (conference) is a private conference that is conducted by a Fair Work Commission Member. At the end of the conference, the Commission Member will make a decision immediately or at a later date as to whether the applicant (the employee) was unfairly dismissed.

At the conference, the Commission Member will consider your evidence and the evidence of the applicant (the employee).

Providing a **Statement of evidence** is an important part of preparing for the conference.

### What is a Statement of evidence?

A **Statement of evidence** is a summary of the evidence that you, and anyone else that you bring, will give in support of your case.

You will generally be required to give sworn evidence at the conference. You will also get an opportunity to challenge the applicant’s (the employee's) evidence.

### How to complete your Statement of evidence

Use the **Statement of evidence** to organise the evidence you will be submitting at your conference. The statement will help you put your information in order and make sure you don't miss anything on the day of the conference.

Your evidence should be about your knowledge and/or observations (or, in the case of your witnesses, their knowledge and/or observations) of issues or events relevant to the unfair dismissal application. Evidence should be about facts and not about emotions.

This **Statement of evidence** has space for three witness statements. If you have more than three witnesses, please attach extra pages.

Sample witness statements can be found on page 2.

### What to do with your completed Statement of evidence

Cross-check the information in your **Statement of evidence** with the answers you have given in your **Outline of argument: merits** and your **Outline of argument: objections**.

Send your completed **Statement of evidence** to the Commission **by the date and time specified in the requirements**. Contact details for your case manager can be found on your Notice of Listing. You should also send a copy of all your material to the applicant (the employee) so they can respond to your claims.

Print out all of your documents and bring them with you on the day so that you can refer to them during the conference.

### Sample 1

**The employer says that the employee was not unfairly dismissed because he/she was dismissed for serious misconduct**

|  |
| --- |
| **Witness statement 1—The respondent (you, the employer)**  I will be giving evidence that:   * The applicant (the employee) began work in the role of ... on date/month/year. * During her first week in the job, she was trained to ... * On the morning of the day of the dismissal, I saw the applicant ... * I asked the applicant .... * The applicant said ... * I explained to the applicant ... I then dismissed the applicant. * The applicant's final pay was processed on ... and included ... |

|  |
| --- |
| **Witness statement 2**  Sue Hui will be giving evidence that:   * She currently works for the business in the role of ... * She has been employed with the business since ... * During the applicant's first week on the job, Sue was trained to ... |

|  |
| --- |
| **Witness statement 3**  Allan Santos will be giving evidence that:   * He has been a regular customer of the business since ... * On the morning of the day of the dismissal, he was sitting ... * He overheard the applicant (the employee) say.... He then saw.... * Etc. |

### Sample 2

**The employer has a jurisdictional objection: that the Fair Work Commission cannot look at the merits of the application because the business had fewer than 15 employees at the time of the dismissal and the employee had not worked for the business for one year when the employee was given notice or if the employee was dismissed without notice, immediately before the dismissal.**

|  |
| --- |
| **Witness statement 1—The respondent (you, the employer)**  I will be giving evidence that:   * The applicant (the employee) was dismissed on date/month/year. * He was asked to leave that same day, and told that his notice period would be paid out. * On that day, the business employed 12 people who were full-time, part-time or regular and systematic casuals. |

|  |
| --- |
| **Witness statement 2**  Rita den Brinker will be giving evidence that:   * She currently works for the business in the role of ... * She has been employed with the business since ... * That she managed the rosters for all staff members. * Etc. |

|  |
| --- |
| **Witness statement 3**  Mike McDonald will be giving evidence that:   * He has been contracted to the business as a ... since ... * He is responsible for ... He has time sheets and pay slips for all employees for the 12 months leading up to the date of the dismissal. * Etc. |

## Respondent’s Statement of evidence

### Matter details

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

### List of witnesses

|  |  |  |
| --- | --- | --- |
| **1.** | **Name** (e.g. you, the respondent) |  |
|  | **Position** (role in the business) |  |

|  |  |  |
| --- | --- | --- |
| **2.** | **Name** |  |
|  | **Position** (e.g. current employee, supplier) |  |
|  | **Relationship to respondent** (e.g. friend, employee) |  |

|  |  |  |
| --- | --- | --- |
| **3.** | **Name** |  |
|  | **Position** (e.g. current employee, supplier) |  |
|  | **Relationship to respondent** (e.g. friend, employee) |  |

*Attach additional pages if necessary*

## Respondent’s Statement of evidence

### Witness statement number 1

#### *Sample witness statements can be found on pages 2 and 3*

|  |  |
| --- | --- |
| **Name** |  |
| **Position** |  |

#### **Witness statement**

|  |
| --- |
|  |

#### *Attach additional pages if necessary*

## Respondent’s Statement of evidence

### Witness statement number 2

#### *Sample witness statements can be found on pages 2 and 3*

|  |  |
| --- | --- |
| **Name** |  |
| **Position** |  |
| **Relationship to respondent** |  |

#### **Witness statement**

|  |
| --- |
|  |

#### *Attach additional pages if necessary*

## Respondent’s Statement of evidence

### Witness statement number 3

#### *Sample witness statements can be found on pages 2 and 3*

|  |  |
| --- | --- |
| **Name** |  |
| **Position** |  |
| **Relationship to respondent** |  |

#### **Witness statement**

|  |
| --- |
|  |

#### *Attach additional pages if necessary*

### 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)).

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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.