



## About the F5 application form

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### Application for security for payment of costs

#### Who can use this form

Use this form if:

- you are an applicant or a respondent in an unfair dismissal matter, and
- you are seeking security for costs in respect of the matter or part of the matter **before** the unfair dismissal matter is determined by the Commission.

#### About security for costs

An order for security for costs can only be made in unfair dismissal matters. An order for security for costs is an order from the Fair Work Commission (the Commission) that an amount for costs be paid when a matter is before the Commission (s. 404, r.55 of the Fair Work Rules 2003). The Commission will only award security for costs once the Commission has balanced the merits of the application, the financial position of the parties, and what is just in the circumstances (*Zornada v St John Ambulance Australia (Western Australia) Inc* [2013] FWCFB 8255 at [36]).

In considering whether security for costs should be ordered the Commission will look at factors such as the financial position of the party against whom the order is sought, the prospects of success and strength of the case of the party resisting the order, the prospects of a costs order being made even if the party seeking the order for security for costs is successful, whether a costs order will be satisfied if made, whether a party will be or will be likely to be absent from the jurisdiction when a decision is made and has no or few assets in the jurisdiction, whether the proceedings raise matters of general importance, whether the hearing of the proceedings is close at hand, and any delay in bringing the application (*Chen v Monash University* [2015] FWC 3888 at [6] per Hatcher VP).

If an order for security for costs is made against a person, that person will be required to pay the amount of the security as instructed by the order (r.55(2)).

An order for security for costs will not usually be made before a matter has been through the Commission's conciliation process.

#### Lodgment and service of your completed form

1. **Lodge your application** and any supporting documents with the Commission. You can lodge this form by post, fax or email, or in person to the [Commission's office](#) in your state or territory.
2. **Serve a copy** of this application on the person against whom you are seeking an order as soon as practicable after you lodge your application with the Commission.

## 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](http://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 answer the question following.

### Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a 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 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**
- a bargaining representative that is representing the person **or**
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

## Glossary of common terms

**Applicant** – This is the person or organisation that is making an application.

**Lawyer** – This 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** – A party is a person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** – The person or business responding to an application made by an Applicant.

**Service** – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 deal with service.

## Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this 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 F5 – Application for security for payment of costs

*Fair Work Act 2009, s.404, Fair Work Commission Rules 2013, rule 55*

This is an application to the Fair Work Commission for security for costs in an unfair dismissal matter in accordance with Part 3-2 of the [Fair Work Act 2009](#).

### Party applying for security of costs



These are the details of the person who is making the application. This may be a different person to the Applicant in the dispute or matter that this application relates to.

Title	[ ] Mr [ ] Mrs [ ] Ms [ ] Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

**If the party applying for security for costs is a business or organisation please also provide the following details**

Legal name of business or organisation	
Trading name of business or organisation	
ABN/ACN	
Contact person	

## FAIR WORK COMMISSION

### Form F5 – Application for security for payment of costs

#### How would you prefer us to communicate with you?

Email (you will need to make sure you check your email account regularly)

Post

#### Do you have a representative?



A representative is a person or organisation who is representing you. This might be a lawyer or paid agent, a union or employer association, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

**Note:** if you have provided details of a representative to the Commission and the details have not changed, you do not need to provide these details again.

#### Your representative



These are the details of the person or organisation who is representing you for security for costs (if any).

Name of person			
Firm, organisation, company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

#### Is your representative a lawyer or paid agent?

Yes

**FAIR WORK COMMISSION**

**Form F5 – Application for security for payment of costs**

No

**Respondent for security for costs**



These are the details of the person or business against whom the security for costs application is made.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

**Does the Respondent for security for costs have a representative?**



A representative is a person or organisation who is representing the Respondent. This might be a lawyer or paid agent, a representative from a union or employer association or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative’s details below

No

**Respondent for security for costs’ representative**



These are the details of the person or organisation who is representing the Respondent for security for costs.

Name of person	
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## FAIR WORK COMMISSION

### Form F5 – Application for security for payment of costs

Organisation			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

#### 1. Commission matter that this application relates to

**1.1 Please provide the details of the unfair dismissal matter in which you are seeking security for costs.**



You will find all of these details on the F2 – Unfair Dismissal Application you received from the Commission.

Commission matter number	
Applicant in unfair dismissal matter	
Respondent(s) in unfair dismissal matter	

**FAIR WORK COMMISSION**

**Form F5 – Application for security for payment of costs**

**2. Grounds for the order**

**2.1 Please set out the grounds on which the application for security for costs is based in numbered paragraphs.**

**3. Amount of the order sought**

**3.1 Please set out the amount of the order sought below.**



You will need to complete a schedule of costs setting out each item that you wish to claim in costs against the other party when you submit the [Form F6 – Application for costs](#).



## FAIR WORK COMMISSION

### Form F5 – Application for security for payment of costs

#### Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	
Date	
Capacity/ Position	



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS