



About the F86A response form

Response to an application for a regulated labour hire arrangement order

About regulated labour hire arrangement orders

The [Fair Work Act 2009](#) provides for the Fair Work Commission (Commission), on application, to make a **regulated labour hire arrangement order** in relation to employees who are supplied, or will be supplied, (directly or indirectly) by their employer to perform work for a **regulated host** (other than a small business employer). Employees supplied by their employer to a regulated host are **regulated employees**.

A regulated labour hire arrangement order may be made where there is a **covered employment instrument** (such as an enterprise agreement or workplace determination) that would apply to the regulated employees if they were employed by the regulated host to perform the work. Such a covered employment instrument is a **host employment instrument**.

The Commission must not make a regulated labour hire arrangement order:

- unless it is satisfied the performance of the work is not or will not be for the provision of a service, rather than for the supply of labour, or
- if it is satisfied that it is not fair and reasonable in all the circumstances to make the order.

For more information about regulated labour hire arrangement orders, including when the Commission may make orders, see [Labour hire employees' protected rates of pay](#).

When to use this form

Use this form to respond to an application for a regulated labour hire arrangement order that has been made to the Commission. If you want the Commission to determine that the application relates to additional employers and employees, you should use the form F86B—Application for a determination that an application for a regulated labour hire arrangement order relates to additional employers and employees.

This form can be used by:

- an employer of regulated employees
- the regulated host
- a regulated employee
- an employee of the regulated host

- an employee organisation that is entitled to represent the industrial interests of a regulated employee or employee of the regulated host, or
- another affected person.

Lodging and serving your completed form

1. Lodge this response and any supporting documents with the Commission.

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

2. Serve a copy of this response and any supporting documents as soon as practicable on all of the following (other than the person making this response):

- the regulated host
- each employer of regulated employees that will be covered by the proposed order, and
- each employee organisation of which the person making this response is aware, that is entitled to represent the industrial interests of a regulated employee or an employee of the regulated host.

You can serve documents several ways, including by email, express post or registered post.

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.

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](#), and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – the person making an application.

Covered employment instrument – see section 12 of the [Fair Work Act 2009](#)

Employer - the employer of the regulated employees to be covered by the proposed regulated labour hire arrangement order

Host employment instrument – see section 306E(6) of the [Fair Work Act 2009](#)

Lawyer – 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. [Fair Work Act 2009](#)

Party – a person involved in a matter or case that is brought to the Commission

Regulated employee – see section 306E(5) of the [Fair Work Act 2009](#)

Regulated host – see section 306C of the [Fair Work Act 2009](#)

Regulated labour hire arrangement order – see section 306E(1) of the [Fair Work Act 2009](#)

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.

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 F86A – Response to an application for a regulated labour hire arrangement order

[Fair Work Act 2009](#) (the Fair Work Act), section 306E

This is a response to an application for the Fair Work Commission to make a regulated labour hire arrangement order in accordance with Part 2-7A of the [Fair Work Act](#).

Details of the application for a regulated labour hire arrangement order (the Application)



These are the details of the application that this response relates to.

Commission case number	
Name of applicant	
Name of regulated host to be covered by the proposed order (the Regulated Host)	
Name of employer to be covered by the proposed order	

Details of the person responding to the Application (the Person Responding)



These are the details of the person responding to the Application.

The Person Responding is (choose one of the following):

- An employer of regulated employees
- The Regulated Host
- An employee organisation that is entitled to represent the industrial interests of a regulated employee or employee of the Regulated Host
- A regulated employee
- An employee of the Regulated Host
- Another affected person.

If the Person Responding is an individual, provide the following information:

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

If the Person Responding is not an individual, provide the following information:

Legal name			
ACN (if a company)			
Trading name or registered business name (if applicable)			
ABN (if applicable)			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

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 (eg a hearing loop)?

- Yes – Specify the assistance required:
- No

Does the Person Responding have a representative?



A representative is a person or organisation that is representing the Person Responding. 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 or organisation that is representing the Person Responding (if any).

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

Is the representative a lawyer or paid agent?



The Applicant will need permission to be represented by a lawyer or paid agent in a conference or hearing that is conducted by a Commission Member. Our [lawyers and paid agents practice note](#) explains when you need to ask for permission to be represented.

Yes – please select:

Lawyer

Paid agent

No

1. Response to the Application

1.1 Does the Person Responding have any objections to the proposed labour hire arrangement order (the Proposed Order) being made?



The objection must relate to whether the Commission is required to make the Proposed Order under section 306E of the Fair Work Act.

Section 306E(1) sets out matters the Commission needs to be satisfied of before it makes a regulated labour hire arrangement order.

Section 306E(1A) provides that the Commission must not make the order unless it is satisfied the performance of the work is not or will not be for the provision of a service, rather than for the supply of labour, having regard to the matters in section 306E(7A).

Section 306E(2) provides that the Commission must not make the order if it is satisfied that it is not fair and reasonable in all the circumstances to make the order, having regard to any matters listed in section 306E(8) on which submissions have been made.

Yes – go to question 1.2

No – go to question 1.3

1.2 If you answered yes to question 1.1, on what basis does the Person Responding object? Select from the options below. If the Person Responding objects on multiple grounds, you can select more than one option.

The employer named in the Application is not a national system employer.

The Regulated Host is not a regulated host as defined in section 306C of the Fair Work Act.

The Regulated Host is a small business employer.

The instrument identified in the Application as the host employment instrument is not a covered employment instrument as defined in section 12 of the Fair Work Act.

The employer named in the application does not and will not supply, directly or indirectly, one or more employees to perform work for the Regulated Host (see sections 306E(1)(a) and 306E(3) of the Fair Work Act).

The instrument identified in the Application as the host employment instrument:

- does not apply to the Regulated Host, or
- would not apply to some or all of the regulated employees if they were employed by the Regulated Host to perform the work.

The performance of the work for the Regulated Host is or will be for the provision of a service, not the supply of labour (see sections 306E(1A) and 306E(7A) of the Fair Work Act).

It is not fair and reasonable in all the circumstances to make the proposed regulated labour hire arrangement order (see sections 306E(2) and 306E(8) of the Fair Work Act).

The ground described below:

Explain why the Person Responding objects on this ground or these grounds:

1.3 If the Person Responding does not object to the Proposed Order being made, does the person want to bring some other issue with the Application to the attention of the Commission?

Yes

No

If you answered yes, describe the issue below.

1.4 Are there any other matters that the Person Responding believes the Commission should consider before deciding whether or not to make the Proposed Order?

Yes

No

If you answered yes, describe the matters the Person Responding believes the Commission should consider.

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Authority to sign and signature



For 'Authority to sign':

- If you are the Person Responding—insert 'Person Responding'
- If you are an employee of a company or organisation that is the Person Responding—insert your position title
- If you are the Person Responding'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