



About the F86B application form

Application for a determination that an application for a regulated labour hire arrangement order relates to additional employers and employees

About determinations that an application for a regulated labour hire arrangement order relates to additional employers and employees

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**.

If an application for a regulated labour hire arrangement order has been made to the Commission, the Commission can determine that the application also relates to other employers (**additional employers**) and employees they supply or will supply to the regulated host to perform work of the kind in relation to which the application was made (**additional regulated employees**).

The Commission can make a determination on application or on its own initiative.

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

When to use this form

Use this form if:

- an application for a regulated labour hire arrangement order has been made to the Commission (the application)
- the Commission has not yet determined the application, and
- you want the Commission to determine that the application relates to one or more additional employers that supply or will supply employees to perform work for the regulated host and to employees of the additional employers.

This form can be used by:

- the applicant for the regulated labour hire arrangement order
- the regulated host
- an employee of the regulated host
- a regulated employee
- an employer that will be covered by the proposed order
- another employer that supplies or will supply employees to the regulated host to perform work of the kind in relation to which the application was made
- an employee who is or will be supplied by another employer to perform work for the regulated host of the kind in relation to which the application was made, or
- an employee organisation that is entitled to represent the industrial interests of such an employee of another employer, a regulated employee or an employee of the regulated host.

Lodging and serving your completed form

1. Lodge this application 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 application and any supporting documents as soon as practicable on all of the following (other than the person making this application):

- the regulated host
- each employer that will be covered by the proposed regulated labour hire arrangement order
- each other employer that the person making this application wants the Commission to determine is an additional employer to which the application for a regulated labour hire arrangement orders relates (a **proposed additional employer**), and
- each employee organisation of which the person making this application is aware, that is entitled to represent the industrial interests of: an employee of such a proposed additional employer; 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

Additional employer – see section 306EA(1)(a) of the [Fair Work Act 2009](#)

Additional regulated employee – see section 306EA(1)(b) of the [Fair Work Act 2009](#)

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

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

Regulated host – see section 306C 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 F86B – Application for a determination that an application for a regulated labour hire arrangement order relates to additional employers and employees

Fair Work Act 2009 (the Fair Work Act), section 306EA

This is an application to the Fair Work Commission for a determination that an application for a regulated labour hire arrangement order relates to additional employers and employees.

Details of the application for a regulated labour hire arrangement order



A determination can only be made under section 306EA of the Fair Work Act if an application for a regulated labour hire arrangement order has been made to the Commission. Provide details of that application here.

| | |
|---|--|
| Commission case number (if known) | |
| Name of applicant for the regulated labour hire arrangement order | |
| Name of regulated host to be covered by the proposed order (the Regulated Host) | |
| Name of employer to be covered by the proposed order | |

The Applicant



These are the details of the person making this application for a determination.

The Applicant is (choose one of the following):

- The Regulated Host
- An employee of the Regulated Host
- A regulated employee
- An employer that will be covered by the proposed order
- Another employer that supplies or will supply employees to the Regulated Host to perform work of the kind in relation to which the application for a regulated labour hire arrangement order was made

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- An employee who is or will be supplied by another employer to perform work for the Regulated Host of the kind in relation to which the application for a regulated labour hire arrangement order was made
- An employee organisation that is entitled to represent the industrial interests of such an employee of another employer, a regulated employee or an employee of the Regulated Host.

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

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

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

| | | | |
|--|--|--|--|
| Legal name of Applicant | | | |
| Applicant's ACN (if a company) | | | |
| Applicant's trading name or registered business name (if applicable) | | | |
| Applicant's ABN (if applicable) | | | |
| Contact person | | | |
| Postal address | | | |

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| | | | |
|--------------------|--|----------|--|
| 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 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 or organisation 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 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.</p> | | | |
| <input type="checkbox"/> Yes – please select: | | <input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent | |
| <input type="checkbox"/> No | | | |

1. Additional employers, additional regulated employees and employee organisations

1.1 Provide the details of each employer that the Applicant wants the Commission to determine is an additional employer to which the application for a regulated labour hire arrangement order relates (a Proposed Additional Employer).



If a Proposed Additional Employer’s details have been provided above because they are the Applicant, you can just insert ‘The Applicant’ in the first space below instead of providing that employer’s details again.

| | | | |
|---|--|----------|--|
| Legal name of employer | | | |
| Employer’s ACN (if a company) | | | |
| Employer’s trading name or registered business name (if applicable) | | | |
| Employer’s ABN (if applicable) | | | |
| Contact person | | | |
| Postal address | | | |
| Suburb | | Postcode | |
| State or territory | | | |
| Phone number | | | |

Add additional pages if necessary

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1.2 For each Proposed Additional Employer, describe the employees of the employer that the Applicant wants the Commission to determine are additional regulated employees to which the application for a regulated labour hire arrangement order relates (the Proposed Additional Regulated Employees).



You can describe the Proposed Additional Employees as a class or group (you do not need to name each employee).

1.3 Provide the details of each employee organisation of which the Applicant is aware, that is entitled to represent the industrial interests of any of the Proposed Additional Regulated Employees.



If an employee organisation’s details have been provided above because it is the Applicant, you can just insert ‘The Applicant’ in the first space below instead of providing that organisation’s details again.

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

Add additional pages if necessary

2. Details of the supply and the work performed or to be performed by the Proposed Additional Regulated Employees

2.1 Describe how each Proposed Additional Employer supplies or will supply, in the manner referred to in section 306E(1)(a) of the Fair Work Act, one or more of the Proposed Additional Regulated Employees to perform work for the Regulated Host, of the kind in relation to which the regulated labour hire order application was made.



The Commission can only make a determination under section 306EA(1) in relation to an employer that supplies or will supply employees in this manner to perform work for the Regulated Host of this kind. See sections 306EA(1) and 306D of the Fair Work Act.

2.2 For each Proposed Additional Employer, describe the kind of work that is being performed or will be performed for the Regulated Host by the employer's Proposed Additional Regulated Employees (the Work).



Section 306D(1) of the Fair Work Act provides that a 'work of a kind' includes work that is substantially of that kind.

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2.3 For each Proposed Additional Employer, is or will performance of the Work for the Regulated Host by the employer’s Proposed Additional Regulated Employees not be for the provision of a service, rather than the supply of labour?



Section 306EA(5)(c) of the Fair Work Act provides that, if the Commission makes a determination under section 306EA(1), it must not specify an additional employer or additional regulated employees in the regulated labour hire arrangement order (if made) unless it is satisfied that the performance of the work by the additional regulated employees is or will not be for the provision of a service, rather than the supply of labour, having regard to the matters in subsection 306E(7A).

Yes

No

2.4 If you answered ‘Yes’ to question 2.3, explain for each Proposed Additional Employer how the performance of the Work for the Regulated Host by the employer’s Proposed Additional Regulated Employees, is not or will not be for the provision of a service, rather than the supply of labour.



Section 306E(7A) of the Fair Work Act lists matters that the Commission must have regard to in satisfying itself that a labour hire arrangement is not for the provision of a service, rather than the supply of labour.

3. Covered employment instrument

3.1 Would the host employment instrument covered by the proposed regulated labour hire arrangement order apply to all of the Proposed Additional Regulated Employees if they were employed by the Regulated Host to perform the Work?



Section 306EA(5)(b) of the Fair Work Act provides that, if the Commission makes a determination, it must not specify an additional employer or additional regulated employees of the employer in the regulated labour hire arrangement order (if made), unless it is satisfied that that the host employment instrument covered by the order would also apply to the additional regulated employees if the Regulated Host were to employ the employees to perform the Work.

Yes

No

Authority to sign and signature



For 'Authority to sign':

- If you are the Applicant—insert 'Applicant'
- If you are an employee of a company or organisation that is 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 | |
|-------------------|--|



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 |
|---|