



About the F86D application form

Application for an alternative protected rate of pay order

About alternative protected rate of pay 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**.

When a regulated labour hire arrangement order is in force, regulated employees covered by the order must generally be paid no less than the **protected rate of pay** for work they perform for the regulated host. The protected rate of pay is generally the full rate of pay the regulated employee would receive if the host employment instrument applied to them.

However, the Commission can make an **alternative protected rate of pay order** if:

- it would be unreasonable to pay a regulated employee the protected rate of pay for work performed for the regulated host (for example, because the rate would be insufficient or excessive), and
- there is another covered employment instrument that applies to:
 - a related body corporate of the regulated host and would apply to a person employed by the related body corporate to perform work of that kind, or
 - the regulated host and would apply to a person employed by the regulated host to perform work of that kind in circumstances that do not apply to the regulated employee.

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 if:

- an application for a regulated labour hire arrangement order has been made to the Commission, but not yet fully determined, or

- the Commission has made a regulated labour hire arrangement order (which is in force or is not yet in force), and
- you wish to apply for an alternative protected rate of pay order.

This form can be used by:

- a regulated employee who is covered by the regulated labour hire arrangement order or proposed regulated labour hire arrangement order
- an employer that is covered by the regulated labour hire arrangement order or proposed regulated labour hire arrangement order
- the regulated host, or
- an employee organisation or employer organisation that is entitled to represent the industrial interests of any of the above.

Lodging and serving your completed form

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

You can lodge:

- by email to lodge@fwc.gov.au, or
- by post or in person at the [Commission's 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 employer that will be covered by the proposed alternative protected rate of pay order
- the regulated host
- the employer to which the covered employment instrument to be specified in the proposed alternative protected rate of pay order applies (if this is not the regulated host)
- each employee organisation of which the person making this application is aware, that is entitled to represent the industrial interests of employees who would be covered by the proposed alternative protected rate of pay order or of employees to whom the covered employment instrument to be specified in the proposed alternative protected rate of pay order applies.

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

Alternative protected rate of pay order – see section 306M(2) of the [Fair Work Act 2009](#)

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

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

Protected rate of pay – see section 306F of the [Fair Work Act 2009](#)

Regulated employee - see subsection 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 F86D – Application for an alternative protected rate of pay order

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

This is an application to the Fair Work Commission to make an alternative protected rate of pay order in relation to a regulated labour hire arrangement order or proposed order in accordance with Part 2-7A of the Fair Work Act 2009.

The Applicant



These are the details of the person making this application.

The Applicant is (choose one of the following):

- A regulated employee who is covered by the regulated labour hire arrangement order or proposed labour hire arrangement order
- An employer that is covered by the regulated labour hire arrangement order or proposed regulated labour hire arrangement order
- The regulated host
- An employee organisation or employer organisation that is entitled to represent the industrial interests of one or more of the above

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			
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> <div style="display: flex; align-items: flex-start;"> <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> </div>			
<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent		
<input type="checkbox"/> No			

1. Details of the regulated labour hire arrangement order or application

1.1 What is the status of the regulated labour hire arrangement order or the application for a regulated labour hire arrangement order? Choose one of the following:



See section 306M(1) of the Fair Work Act.

A regulated labour hire arrangement order has been made (and is in force or is not yet in force) – provide details of the order below:

Name of order	
ID/Code number	
Date order was made	
Date order came or comes into force	

An application for a regulated labour hire arrangement order has been made but has not been finally determined by the Commission – provide details of the application below:

Commission case number (if known)	
Name of applicant	
Name of regulated host to be covered by the proposed order	
Name of employer or employers to be covered by the proposed order	

2. Other details

2.1 Provide the details of the regulated host covered by the regulated labour hire arrangement order or proposed order (the Regulated Host).



If the Regulated Host'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 the Regulated Host's details again.

Legal name of regulated host			
Regulated host's ACN (if a company)			
Regulated host's trading name or registered business name (if applicable)			
Regulated host's ABN (if applicable)			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

2.2 Provide the details of the employer of regulated employees to be covered by the proposed alternative protected rate of pay order (the Employer).



If the Employer'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 the 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			
State or territory		Postcode	
Phone number			
Email address			

Add additional pages if there is more than one Employer

2.3 Describe the regulated employee or employees to be covered by the proposed alternative protected rate of pay order (the Regulated Employees).

2.4 Provide the details of each employee organisation of which the Applicant is aware, that is entitled to represent the industrial interests of:

- a Regulated Employee, or
- an employee to whom the covered employment instrument to be specified in the proposed alternative protected rate of pay order applies.



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 there is more than one employee organisation

3. Work performed or to be performed by the Regulated Employees

3.1 Describe the kind of work that is being performed or will be performed for the Regulated Host by the Regulated Employees and that will be covered by the proposed alternative protected rate of pay order (the Work).



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

4. Covered employment instrument

4.1 Provide details of the covered employment instrument to be specified in the proposed alternative protected rate of pay order (the Covered Employment Instrument).



See section 306M(3) of the Fair Work Act. An alternative protected rate of pay order must specify a covered employment instrument that:

- applies to a related body corporate of the regulated host and would apply to a person employed by the related body corporate to perform the Work, or
- applies to the regulated host and would apply to a person employed by the regulated host to perform the Work in circumstances that do not apply to the Regulated Employees.

See section 12 of the Fair Work Act for the definition of *covered employment instrument*.

Include the full name of the instrument and any other identifying information that you can, such as its ID/Code number, date approved or matter number.

4.2 Does the Covered Employment Instrument apply to a related body corporate of the Regulated Host or to the Regulated Host? Choose one of the following:

- The Covered Employment Instrument applies to a related body corporate of the Regulated Host and would apply to a person employed by the related body corporate to perform the Work.
- The Covered Employment Instrument applies to the Regulated Host and would apply to a person employed by the regulated host to perform the Work in circumstances that do not apply to the Regulated Employees.

4.3 If the Covered Employment Instrument applies to a related body corporate of the Regulated Host, provide the details of the related body corporate

Legal name of related body corporate			
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			

5. Further criteria for making an alternative protected rate of pay order

5.1 Explain why it would be unreasonable for the requirement in section 306F of the Fair Work Act to apply in connection with the Work.



See section 306M(6)(a) of the Fair Work Act.

The requirement in section 306F is that the Employer pay the Regulated Employees at no less than the protected rate of pay. It might be unreasonable for this requirement to apply, for example, because the protected rate of pay would be insufficient or excessive.

5.2 Explain why the Commission should make the order, having regard to the matters set out in section 306M(8) of the Fair Work Act and any other matters the Applicant thinks the Commission should consider.



Section 306M(8) of the Fair Work Act requires the Commission to have regard to the following:

- (a) whether the host employment instrument covered by the regulated labour hire arrangement order applies only to a particular class or group of employees
- (b) whether, in practice, the host employment instrument has ever applied to an employee at a classification, job level or grade that would be applicable to the Regulated Employees
- (c) the views (if any) of any persons or organisations mentioned in section 306M(7)
- (d) the rate of pay that would be payable to the Regulated Employees in connection with the Work if the alternative protected rate of pay order were made, and
- (e) any other matter the Commission considers relevant.

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	
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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