

From: Trent.Sebbens@ashurst.com [mailto:Trent.Sebbens@ashurst.com]
Sent: Monday, 20 November 2017 12:03 PM
To: Chambers - Kovacic DP
Cc: Adrian.Morris@ashurst.com; Elysse.Lloyd@ashurst.com;
aguy@professionalsaust.onmicrosoft.com; athomas@cfmeu.com.au; abha.devasia@amwu.org.au;
gunzburg@bigpond.net.au
Subject: RE: AM2014/190 – Four Yearly Review of Modern Awards – Transitional Provisions –
Accident Pay Provisions [BD-CM.30002560.02-3000-0722]

Dear Associate

We **attach** a copy of the letter dated 9 November 2017 to CMI referred to in our email of earlier today.

Yours sincerely

Trent Sebbens

Partner

trent.sebbens@ashurst.com

Ashurst

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From: Sebbens, Trent 66313
Sent: Monday, 20 November 2017 9:53 AM
To: 'Chambers.Kovacic.DP@fwc.gov.au'
Cc: Morris, Adrian 66025; Lloyd, Elysse 65620; 'aguy@professionalsaust.onmicrosoft.com';
'athomas@cfmeu.com.au'; 'abha.devasia@amwu.org.au'; 'gunzburg@bigpond.net.au'
Subject: AM2014/190 – Four Yearly Review of Modern Awards – Transitional Provisions – Accident
Pay Provisions [BD-CM.30002560.02-3000-0722]

Dear Associate

AM2014/190 – Four yearly review of modern awards – Transitional provisions – Accident pay provisions – Black Coal Mining Industry Award

We confirm that we act for the Coal Mining Industry Employer Group (**CMIEG**).

We **attach**, by way of filing, a further Application for order for production of documents etc to the Fair Work Commission in respect of Coal Mines Insurance Pty Limited (**CMI**). For convenience, we have also attached an electronic copy of the Draft Order.

We note that since 9 November 2017, CMI has had notice of the information sought in each item of the Schedule to the proposed order. A request was made jointly by the CMIEG, CFMEU, APESMA and AMWU, by way of correspondence to CMI on 9 November 2017, for information in response to those items. We have been advised on Friday, 13 November 2017 by CMI that it would provide information in response to the items if required to do so under an order of the Commission, but not otherwise.

We note that the proposed order is returnable on Wednesday, 22 November 2017 given that the further hearing of this matters is listed for Friday, 24 November 2017.

The CMIEG considers that the Commission has power to make such an order under section 590 of the *Fair Work Act 2009* (Cth) being the provision of "other information" to the Commission within the meaning of that term in subclause 590(2)(c). The CFMEU, APESMA and AMWU have a concern that the Commission does not have the power to demand information be created by a non-party to

proceedings. Notwithstanding this, the unions would not object to the orders being made in the terms proposed by the CMIEG if the Commission was satisfied that it had the power to make such orders.

We have copied this correspondence to the representatives for the CFMEU, APESMA and AMWU. Please contact us if you have any questions concerning the application.

Yours sincerely

Trent Sebbens

Partner

trent.sebbens@ashurst.com

Ashurst

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09 November 2017

BY EMAIL

Lucy Fleming
Chief Executive Officer
Coal Mines Insurance Pty Limited
Level 21, 44 Market Street
SYDNEY NSW 2000



(Email: lucy.flemming@coalservices.com.au)

Dear Ms Fleming

AM2014/190 - Four yearly review of modern awards – Transitional provisions – Accident pay provisions – Black Coal Mining Industry Award 2010

We act for the companies and their associated entities collectively known as the Coal Mining Industry Employer Group (**CMIEG**) for the purpose of these proceedings. The details of those companies is set out in the enclosed order described further below.

Order requiring production of documents

We **enclose**, by way of service, an order made pursuant to section 590(2) of the *Fair Work Act 2009* (Cth) by the Fair Work Commission on 9 November 2017, upon the application of the CMIEG and with consent of the CFMEU – Mining and Energy Division, APESMA - Collieries' Staff Division and Australian Manufacturing Workers' Union (**Order**).

Under the Order, Coal Mines Insurance Pty Limited (**CMI**) is required to provide a response to the Order by Monday, 20 November 2017.

We note that the further hearing of this matter is listed for Friday, 24 November 2017 and the information and documents in response to the Order is required for the hearing on that date.

Joint questions

In addition to the response to the Order, the CMIEG, CFMEU, APESMA and AMWU seek responses from CMI to questions set out in the **attached** Schedule. Those questions relate to the response CMI provided to the earlier Order issued on 8 December 2016 by the Fair Work Commission.

We note that the New South Wales Minerals Council is aware that this request is being made and does not oppose it. We are advised that the CFMEU consents to the request being responded to by CMI.

We request that a response to these questions be provided to these questions by Monday, 20 November 2017 or earlier if possible.

Please contact us if you have any questions concerning this request.

We have copied this correspondence to the responsible officers with carriage of these proceedings from the CFMEU – Mining and Energy Division, APESMA - Collieries' Staff Division and Australian Manufacturing Workers' Union.

Yours sincerely



Enc

Copy to: Adam Guy
Legal Officer – APESMA - Collieries' Staff Division
(aguy@professionalsaustralia.org.au)

Andrew Thomas
National Industrial Officer - CFMEU – Mining and Energy Division
(athomas@cfmeu.com.au)

Abha Devasia
Research Officer - Australian Manufacturing Workers' Union
(abha.devasia@amwu.org.au)

SCHEDULE**JOINT QUESTIONS OF CMIEG, CFMEU, APESMA AND AMWU**

1. Item 5 of the Order issued on 8 December 2016 to Coal Mines Insurance Pty Limited (**CMI**) by the Fair Work Commission (**Order**) required production of the following:

"5. Data showing the number of claims for workers' compensation under insurance policies held with CMI, in relation to which any payments for accident pay were made, which were indemnified under policies held with CMI, in each year, for the period 1973 to 2016."

The data produced in response to Item 5 of the Order shows a significant decline in the number of claims made in the period 2003/2004. In respect of that decline, please provide information relating to:

- (a) any change in the way that this data was recorded in the period following 2003/2004 compared to the period prior to that time (in particular from 1994/1995 to 2003/2004);
 - (b) any factors that could have had an effect on the number of claims in or about the period of 2003/2004;
 - (c) the effect, if any, of the following on the data:
 - (i) the performance of the CMI scheme in the years leading up to 2003/2004;
 - (ii) any changes made to scheme administration in the period in or about 2003/2004;
 - (iii) the appointment of Employers Mutual Limited as manager of the CMI scheme in or about 2003/2004;
 - (iv) any change to the way in which claims were managed in or about 2003/2004; and
 - (v) any change to the calculation of premium in or about 2003/2004, including in respect of the impact of the claim history of insured companies on the calculation of premium.
2. Item 6 of the Order required production of the following:

"6. In respect of the claims for workers' compensation under insurance policies held with CMI, in relation to which any payments for accident pay were made, which were indemnified under policies held with CMI, data showing the period of time for which payments for accident pay were made, in each year, for the period 1973 to 2016."

This item was clarified by way of an email of David Gunzburg to CMI on 4 January 2017 stating the item sought data relating to "each injury which occurred in ... each "accident year" ".

CMI produced a table in response to Item 6 entitled "*Claim counts by Financial Year and Paid duration weeks of Accident Pay payments as at 30 November 2016*". A copy of the response to Item 6 is **attached**. Please confirm that the data contained in response to Item 6 records the number of accepted claims for accident pay sorted by (a) year of injury and (b) the number of weeks of accident pay actually paid as at 30 November 2016.

If that is the case, please advise whether the duration of accident pay payments for injuries in the years 2015 and 2016 may be understated (because, for example, in respect of an injury for which a claim has been made that incurred on 1 January 2016, the maximum possible duration of accident pay payments as at 30 November 2016 is 48 weeks)?

3. Further in respect of the response of CMI to Item 6, please advise the effect, if any, of the following on the data, particularly in relation to the most recent years, 2011 to 2016:
 - (a) any delay in reporting injuries by claimants;
 - (b) any delay in a claimant making a claim;
 - (c) any delay in CMI dealing with (including disputing or accepting liability for) claims.
4. Subject to the response in question 3 (above), please advise whether the reported number of injuries or claims for the years 2011 to 2016 may be subject to change, if claims relating to injuries occurring in a particular year are not reported, made or dealt with until later years.

Form F52 Order Requiring Production of Documents etc. to the Fair Work Commission

Fair Work Act 2009, s.590(2)(c)

Fair Work Commission Rules 2013, Rule 54

FAIR WORK COMMISSION

Commission Matter No.: AM2014/190

Applicant:

Coal Mine Industry Employer Group

(consisting of BHP Billiton Limited (ACN 004 028 077); Centennial Coal Company Limited (ACN 003 714 538); Curragh Queensland Mining Pty Ltd (ABN 55 095 450 418); Ensham Resources Pty Limited (ACN 011 048 678); Fitzroy Australia Resources Pty Ltd (ABN 14 615 772 391); Glencore Coal Pty Limited (ACN 082 271 930); Jellinbah Resources Pty Ltd (ACN 010 825 215); Peabody Energy Australia Coal Pty Limited (ACN 001 401 663); Rio Tinto Coal Australia Pty Limited (ACN 010 542 140); South32 Limited (ACN 093 732 597); Whitehaven Coal Mining Limited (ACN 086 426 253); Yancoal Australia Ltd (ACN 111 859 119)and each of their associated entities operating in the black coal mining industry.)

**Respondents: Construction, Forestry, Mining and Energy Union;
The Association of Professionals, Engineers, Scientists and Managers, Australia; and
"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the
Australian Manufacturing Workers' Union (AMWU)**

TO:

Coal Mines Insurance Pty Limited
Level 21, 44 Market Street

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 4:00pm AEDT

Date: 20 November 2017

Place: Terrace Tower, 80 William Street, East Sydney; and electronically to chambers.kovacic.dp@fwc.gov.au

Dated: 9 November 2017



Note:

- This order has been issued at the request of the Applicant.
- You can apply to have this order set aside or varied.
- Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day mentioned above.
- If you have any queries in relation to this order please contact the associate to Deputy President Kovacic on (02) 6152 2911.

SCHEDULE

1. Item 5 of the Order issued on 8 December 2016 to Coal Mines Insurance Pty Limited by the Fair Work Commission (**Order**) required production of the following:

"5. Data showing the number of claims for workers' compensation under insurance policies held with CMI, in relation to which any payments for accident pay were made, which were indemnified under policies held with CMI, in each year, for the period 1973 to 2016."

Please provide an updated response for the years 2015 and 2016, and in addition provide information in response to this item for the year 2017.

2. Item 6 of the Order required production of the following:

"6. In respect of the claims for workers' compensation under insurance policies held with CMI, in relation to which any payments for accident pay were made, which were indemnified under policies held with CMI, data showing the period of time for which payments for accident pay were made, in each year, for the period 1973 to 2016."

This item was clarified by way of an email of David Gunzburg to Coal Mines Insurance Pty Limited (**CMI**) on 4 January 2017 stating the item sought data relating to *"each injury which occurred in ... each "accident year" "*.

Please provide an updated response for the years 2015 and 2016, and in addition provide information in response to this item for the year 2017, in accordance with the clarification provided.

3. In respect of the claims for workers' compensation under insurance policies held with CMI, in relation to which any payments for accident pay that were made that were indemnified under policies held with CMI, please provide data showing the length of time taken for the injured worker to return to work for each injury which occurred in each accident year, for the period of time 1973 to 2016.

(Note: Subject to the way in which the data is recording by CMI, it is preferable that data is provided that separately identifies durations of time off work in one week intervals).

Notes:

- (A) In respect of each item required to be produced, a reference to Coal Mines Insurance Pty Limited or "CMI", includes a reference to each of its predecessors including, but not limited to, Mine Owners Insurance Ltd.
- (B) "Accident pay" has the same meaning as in an industrial instrument (including an award, enterprise agreement or other collective agreement), order or determination of a tribunal (including but not limited to the Coal Industry Tribunal, the Australian Conciliation and Arbitration Commission, the Australian Industry Relations Commission, Fair Work Australia, the Fair Work Commission, the Industrial Commission (of New South Wales) and the Industrial Relations Commission of New South Wales) for accident pay.
- (C) "Document" has the same meaning as under the *Evidence Act 1995* (Cth).
- (D) The singular includes the plural and the plural includes the singular.
- (E) A reference to any corporation, whether expressly identified or not, includes a reference to any associated entity, related body corporate, representative or agent of that corporation.

Claim counts by Financial Year and Paid duration weeks of Accident Pay payments as at 30 November 2016

Item 6 (as per the order schedule):

In respect of the claims for workers compensation under insurance policies held with CMI, in relation to which any payments for accident pay were made, which were indemnified under policies held with CMI, data showing the period of time for which payments for accident pay were made, in each year, for the period 1973 to 2016.

Item 6 (clarification as per email from Mr David Gunzburg dated 4/1/2017):

The problem here is a little more confusing. We were seeking information about the duration of payments for each injury which occurred in what I think you may call each "accident year". So if an accident occurred in 2006 and lasted for 60 weeks it would show as 2006 for 62 weeks. You have provided the length of payments made in each calendar year – which of course cannot exceed 52 weeks and would

January 2017 response

Taking into consideration the wording of the original Item 6 in the schedule of the order and the clarification provided by Mr Gunzburg in his email of 4/1/2017, the following is provided: Data showing claims that received accident pay by date of injury by accident year (calendar year) for the years 1995 to 2016 and the duration for which payments for accident pay were made. There are a number of system data limitations and these are provided under Notes/Limitations below.

Notes/Limitations:

1. Due to system upgrades and data migration processes, a detailed breakdown of Accident Pay payments processed before November 1989 are not available in the CMI System.
2. Additionally, prior to 1994/95, Accident Pay generally only applied post 26 weeks of total incapacity and where any 'over Award compensation' under the relevant instrument's Accident Pay clause was made in the 0-26 week period it was captured with the workers compensation payment as one amount and cannot be separately identified. For the purposes of data consistency, claims were grouped by date of injury by accident year from 1995.
3. In response to changes in the relevant industrial instruments in the mid 1990s that affected the way Accident Pay applied, an additional Accident Pay payment code was implemented in the CMI System from FY 1994/95 which is used in the 0-26 week period of total incapacity. However, paid duration data is not captured in the 0-26 week period so duration data for that period cannot be extracted from the system.
4. Due to the system limitations stated in Note 3, the duration of Accident Pay payments in the 0 to 26 week period cannot be identified. Claims with Accident Pay payments isolated to the first 26 weeks of total incapacity were grouped in a single 0 to 26 week payment category that shows the total number of claims. Claims with over 26 weeks Accident Pay were assumed to have received the first 26 weeks of Accident Pay payments. Duration of Accident Pay payments post 26 weeks is captured in the CMI system.
5. For the 27 to 78 week period, claims were counted in a paid duration week category which matches the rounded whole number value of it's total paid duration weeks of Accident Pay payments processed from date of injury up to 30 November 2016 with the following exception:
27 wk : Total paid duration greater than 26 weeks and less than 27.5 weeks
6. Future weeks' deductions, internal adjustments, overpayment recoveries and CTP recoveries payment transactions were excluded in the calculation of Total Paid duration weeks of Accident Pay payments.

Claim counts by Financial Year and Paid duration weeks of Accident Pay payments as at 30 November 2016

Accident Year	0 to 26 wk	27 wk	28 wk	29 wk	30 wk	31 wk	32 wk	33 wk	34 wk	35 wk	36 wk	37 wk	38 wk	39 wk
1995	281	7	3	6	3	3	0	2	4	3	0	2	3	0
1996	259	4	4	3	3	0	4	1	1	0	2	5	2	2
1997	427	8	3	1	4	1	2	3	2	1	2	1	2	1
1998	366	7	5	3	3	2	2	1	3	0	1	1	1	1
1999	305	0	0	5	2	1	1	4	3	0	3	2	0	2
2000	276	1	1	4	0	1	1	2	2	2	0	0	0	4
2001	274	3	3	1	1	3	2	0	1	3	2	1	2	1
2002	227	2	3	5	2	1	2	4	1	0	1	1	1	1
2003	199	1	0	1	1	3	1	1	2	1	1	1	1	0
2004	187	2	1	0	2	3	1	0	3	0	0	1	1	0
2005	46	1	0	2	0	0	1	2	2	0	0	1	0	0
2006	16	2	1	4	0	3	1	0	0	0	2	2	0	0
2007	26	3	6	2	2	1	0	0	5	0	0	1	1	0
2008	17	3	4	2	0	0	0	0	1	2	1	1	0	0
2009	23	5	2	2	0	1	1	2	1	2	4	0	0	0
2010	32	4	2	1	1	1	1	0	1	1	1	1	1	0
2011	43	5	2	0	1	1	0	2	1	2	1	1	3	2
2012	41	10	1	0	1	2	1	1	1	1	3	1	0	2
2013	71	5	1	1	0	2	1	1	3	0	1	3	0	1
2014	91	3	3	2	1	1	0	3	0	0	3	0	2	1
2015	52	3	1	0	3	1	0	1	0	0	1	2	3	2
2016	50	2	0	2	0	2	1	1	0	1	1	0	0	0

Form F52—Application for order for production of documents etc to the Fair Work Commission

Fair Work Act 2009, s.590(2)(c); Fair Work Commission Rules 2013, rule 54 and Schedule 1

This is an application to the Fair Work Commission for an order requiring a person to produce documents or records or other information in accordance with s.590(2)(c) of the Fair Work Act 2009.

Party applying for an order



These are the details of the person who is making this application.

Title	[X] Mr [] Mrs [] Ms [] Other please specify:		
First name(s)	Trent		
Surname	Sebbens		
Postal address	Ashurst Australia Level 11, 5 Martin Place		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	(02) 9258 6313	Fax number	(02) 9258 6999
Email address	trent.sebbens@ashurst.com		

If the party applying for an order is a company or organisation please also provide the following details

Legal name of business	The group known as the "Coal Mine Industry Employer Group" (consisting of Anglo American Australia Limited; BHP Billiton Limited; Curragh Queensland Mining Pty Ltd; Centennial Coal Company Limited; Ensham Resources Pty Limited; Fitzroy Australia Resources Pty Ltd; Glencore Coal Pty Limited; Jellinbah Resources Pty Ltd; Peabody Energy Australia Coal Pty Limited; Rio Tinto Coal Australia Pty Limited; South32 Limited; Whitehaven Coal Mining Limited; Yancoal Australia Limited, and each of their associated entities operating in the black coal mining industry)
Trading name of business	Coal Mine Industry Employer Group
ABN/ACN	BHP Billiton Limited (ACN 004 028 077); Centennial Coal Company Limited (ACN 003 714 538); Curragh Queensland Mining Pty Ltd (ABN 55 095 450 418); Ensham Resources Pty Limited (ACN 011 048 678); Fitzroy Australia Resources Pty Ltd (ABN 14 615 772 391); Glencore Coal Pty Limited (ACN 082 271 930); Jellinbah Resources Pty Ltd (ACN 010 825 215); Peabody Energy Australia Coal Pty Limited (ACN 001 401 663); Rio Tinto Coal Australia Pty Limited (ACN 010 542 140); South32 Limited (ACN 093 732 597); Whitehaven Coal

Mining Limited (ACN 086 426 253); Yancoal Australia Ltd (ACN 111 859 119)

Contact person Trent Sebbens, Partner (Ashurst Australia)

How would you prefer us to communicate with you?

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

Post

The Commission matter that this application relates to



These are the details of the main matter that the documents relate to

Name of Applicant from main matter Coal Mining Industry Employer Group

Name of Respondent from main matter Construction, Forestry, Mining and Energy Union (**CFMEU**)
The Association of Professionals, Engineers, Scientists and Managers, Australia (**APESMA**)
"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (**AMWU**) (**AMWU**)

Commission Matter Number AM2014/190

Your role in main matter Applicant Respondent Other please specify:

1. The Application

1.1 What documents are being sought?



Using numbered paragraphs, list the documents etc you are seeking to be produced to the Fair Work Commission.

See attached schedule

1.2 Why is each document being sought?



Using numbered paragraphs, provide details specifying why each document is sought and how the documents can assist the Member in deciding the main matter. For instance, what evidence is contained in the documents and what is the apparent relevance of each document to your matter?

The information to be produced concern claims for workers compensation and "accident pay", the period over which workers compensation and accident pay are made in respect of claims, and an update to the data previously produced in this matter relating to these matters in respect of an Order

issued on 8 December 2016 to Coal Mines Insurance Pty Limited by the Fair Work Commission.

The information is sought from the compulsory insurer for workers compensation in the black coal mining industry in NSW, Coal Mines Insurance Pty Ltd (ACN 000 011 727), being the "workers compensation company" approved under section 9 of the *Coal Industry Act 2001* (NSW) for the purposes of the *Workers Compensation Act 1987* (NSW) and the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

The information is relevant to the assessment of the application by the CMIEG to vary the terms of clause 18 – Accident Pay of the Black Coal Mining Industry Award [MA000001], to provide for an accident pay entitlement of 52 weeks.



You must complete the draft order attached to this form.

Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.

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 Trent Sebbens

Date 20 November 2017

Capacity / Position Partner, Ashurst Australia
(Solicitors for the CMIEG)



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



FairWork
Commission

DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) - Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Coal Mine Industry Employer Group

(consisting of BHP Billiton Limited (ACN 004 028 077); Centennial Coal Company Limited (ACN 003 714 538); Curragh Queensland Mining Pty Ltd (ABN 55 095 450 418); Ensham Resources Pty Limited (ACN 011 048 678); Fitzroy Australia Resources Pty Ltd (ABN 14 615 772 391); Glencore Coal Pty Limited (ACN 082 271 930); Jellinbah Resources Pty Ltd (ACN 010 825 215); Peabody Energy Australia Coal Pty Limited (ACN 001 401 663); Rio Tinto Coal Australia Pty Limited (ACN 010 542 140); South32 Limited (ACN 093 732 597); Whitehaven Coal Mining Limited (ACN 086 426 253); Yancoal Australia Ltd (ACN 111 859 119)and each of their associated entities operating in the black coal mining industry.)

Respondent(s):

Construction, Forestry, Mining and Energy Union

The Association of Professionals, Engineers, Scientists and Managers, Australia

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)

Commission Matter No:

AM2014/190 – Four yearly review of modern awards – Accident pay – Transitional provisions (Black Coal Mining Industry Award)

COMMISSION MEMBER

DATE

TO: Coal Mines Insurance Pty Limited
Level 21, 44 Market Street
SYDNEY NSW 2000

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 4.00pm
Date: Wednesday, 22 November 2017
Place: Fair Work Commission
Level 10, Terrace Tower
80 William Street
EAST SYDNEY NSW 2011

Member

Note:

- This order has been issued at the request of [*party applying for order*].
- You can apply to have this order set aside or varied.
- Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.
- If you have any queries in relation to this order please contact the associate to [*member*] on [*chamber's email*].

SCHEDULE

1. Item 5 of the Order issued on 8 December 2016 to Coal Mines Insurance Pty Limited (**CMI**) by the Fair Work Commission (**Order**) required production of the following:

"5. Data showing the number of claims for workers' compensation under insurance policies held with CMI, in relation to which any payments for accident pay were made, which were indemnified under policies held with CMI, in each year, for the period 1973 to 2016."

The data produced in response to Item 5 of the Order shows a significant decline in the number of claims made in the period 2003/2004. In respect of that decline, provide information relating to:

- (a) any change in the way that this data was recorded in the period following 2003/2004 compared to the period prior to that time (in particular from 1994/1995 to 2003/2004);
- (b) any factors that could have had an effect on the number of claims in or about the period of 2003/2004;
- (c) the effect, if any, of the following on the data:
 - (i) the performance of the CMI scheme in the years leading up to 2003/2004;
 - (ii) any changes made to scheme administration in the period in or about 2003/2004;
 - (iii) the appointment of Employers Mutual Limited as manager of the CMI scheme in or about 2003/2004;
 - (iv) any change to the way in which claims were managed in or about 2003/2004; and
 - (v) any change to the calculation of premium in or about 2003/2004, including in respect of the impact of the claim history of insured companies on the calculation of premium.

2. Item 6 of the Order required production of the following:

"6. In respect of the claims for workers' compensation under insurance policies held with CMI, in relation to which any payments for accident pay were made, which were indemnified under policies held with CMI, data showing the period of time for which payments for accident pay were made, in each year, for the period 1973 to 2016."

This item was clarified by way of an email of David Gunzburg to CMI on 4 January 2017 stating the item sought data relating to "each injury which occurred in ... each "accident year" ".

CMI produced a table on 19 January 2017 in response to Item 6 entitled "Claim counts by Financial Year and Paid duration weeks of Accident Pay payments as at 30 November 2016". In respect of the data contained in that table, provide the following information:

- (a) Confirm that the data records the number of accepted claims for accident pay sorted by (i) year of injury and (ii) the number of weeks of accident pay actually paid as at 30 November 2016.

- (b) Subject to the answer in (a), advise whether the duration of accident pay payments for injuries in the years 2015 and 2016 may be understated (because, for example, in respect of an injury for which a claim has been made that incurred on 1 January 2016, the maximum possible duration of accident pay payments as at 30 November 2016 is 48 weeks).
- (c) Advise the effect, if any, of the following on the data, particularly in relation to the most recent years, 2011 to 2016:
 - (i) any delay in reporting injuries by claimants;
 - (ii) any delay in a claimant making a claim;
 - (iii) any delay in CMI dealing with (including disputing or accepting liability for) claims.
- (d) Subject to the response in (c), advise whether the reported number of injuries or claims for the years 2011 to 2016 may be subject to change, if claims relating to injuries occurring in a particular year are not reported, made or dealt with until later years.

Notes:

- (A) In respect of each item required to be produced, a reference to Coal Mines Insurance Pty Limited or "CMI", includes a reference to each of its predecessors including, but not limited to, Mine Owners Insurance Ltd.
- (B) "Accident pay" has the same meaning as in an industrial instrument (including an award, enterprise agreement or other collective agreement), order or determination of a tribunal (including but not limited to the Coal Industry Tribunal, the Australian Conciliation and Arbitration Commission, the Australian Industry Relations Commission, Fair Work Australia, the Fair Work Commission, the Industrial Commission (of New South Wales) and the Industrial Relations Commission of New South Wales) for accident pay.
- (C) "Document" has the same meaning as under the *Evidence Act 1995* (Cth).
- (D) The singular includes the plural and the plural includes the singular.
- (E) A reference to any corporation, whether expressly identified or not, includes a reference to any associated entity, related body corporate, representative or agent of that corporation.