

Form F52 Consent 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.: AM2016/30 Alpine Resorts Award 2010

Applicant: Australian Business Lawyers & Advisors

Respondent(s): Australian Ski Areas Association

To: Christopher Nowland
Harmers Workplace Lawyers
Level 27, St Martins Tower, 31 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: 10.00am
Date: 12 April 2017
Place: Fair Work Commission, Sydney

Dated: 6 April 2017



Vice President Hatcher

Note:

- This order has been issued by consent of the parties.
- 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 Vice President Hatcher on (02) 9308 1812.

SCHEDULE

1. A confidential affidavit (“**Affidavit**”) with respect to its members Kosciusko Thredbo Pty Ltd, Mount Hotham Skiing Company Pty Ltd, Perisher Blue Pty Limited, Falls Creek Ski Lifts Pty Ltd, Buller Ski Lifts Group and Australian Alpine Enterprises Pty Ltd (“**Relevant Companies**”) in response to the following questions:
 - (a) in respect of each of the Relevant Companies, are the Award-covered staff who perform work in restaurants, cafes, take away shops, hotels, lodges and other accommodation services all engaged under the *Alpine Resorts Award 2010*?
 - (b) in respect of each of the Relevant Companies, are there Award-covered staff performing work in restaurants cafes, take away shops, hotels, lodges or other accommodation services who are engaged under either the *Restaurant Industry Award 2010*, the *General Retail Industry award 2010* or the *Hospitality Industry (General) Award 2010*?
 - (c) If the answer to Question 2(B) is yes, then please specify:
 - (i) the number of staff engaged under each of the awards mentioned in Question 2(B); and
 - (ii) the trading names of the businesses in which these staff work.
2. The Australian Ski Areas Association shall annex to the Affidavit, a Confidential Schedule containing daily lift pass usage data from each of the Relevant Companies for the period between [June – October] (“*Snowsports Season*”) expressed as a percentage of the busiest day of the Snowsports Season, with the busiest day represented as 100%. Reference in these Orders to the Affidavit includes all and any annexures to the Affidavit.
3. Order [5] of the Orders issued by the Fair Work Commission on 24 November 2016 (“**Orders**”) is varied as follows:

[5] Parties seeking a change to the coverage of the award (issue 4) shall file:

 - (i) *any individual business operator witness statements upon which they wish to rely by 5.00pm Friday 31 March 2017; and*
 - (ii) *any witness statement in response to matters addressed in the Affidavit and any written submissions within seven days of the Fair Work Commission making these orders. To the extent that the witness statement or the written submissions deal with matters addressed in the Affidavit, such content should be separately marked as “confidential” (“the Confidential ABI Documents”).*
5. Order [6] of the Orders is varied as follows:

[6] In relation to issue 4, any submissions, witness statements and other evidentiary material in reply shall be filed within 14 days of the filing of the witness statement in response to matters addressed in the Affidavit and any written submissions as referred to in Order [5](ii).
6. Pursuant to section 594 of the *Fair Work Act 2009* (Cth), access to and publication of the Affidavit and Confidential ABI Documents is limited as follows:
 - (a) the Affidavit and Confidential ABI Documents shall not be published on the Fair Work Commission website or otherwise;

- (b) access to the Affidavit and Confidential ABI Documents is limited to a person who is a party to AM2016/30, but not including the members or affiliates of a party who is a registered industrial organisation or association, and for the purposes of the proceedings only; and
- (c) access to the Affidavit and Confidential ABI Documents is only to be made available upon the execution and return of the confidentiality undertaking annexed to these orders to the Fair Work Commission.

Confidentiality Undertaking

I, _____, being legal representative or counsel for the [insert name of participating party] (“Participating Party”) in the Fair Work Commission proceeding AM2016/30 (“Proceeding”), in relation to the Confidential Documents and in relation to the Confidential Information.

undertake that:

1. Subject to any contrary order of the Fair Work Commission, I shall not disclose or permit to be disclosed the Confidential Documents or the Confidential Information, or any notes, records, memoranda or other documents (including, but not limited to, any electronic versions of them) created by me, or on my behalf, incorporating or referring to, or derived directly or indirectly from, the Confidential Documents or the Confidential Information, to any other person (including the Participating Party and any of their other representatives) other than:
 - (a) the legal representatives or counsel of the Participating Party, and only if such persons have first signed and returned to the Fair Work Commission an undertaking in this form; and
 - (b) secretarial staff in the ordinary course of the provision of administrative assistance to the Participating Party’s legal representatives or counsel, and only if:
 - (i) such legal representatives or counsel have first signed and returned to the Fair Work Commission an undertaking in this form; and
 - (ii) such secretarial staff are informed of, and will adhere to, the non-disclosure obligations in this undertaking.
2. Subject to my professional obligations as a legal representative or counsel, following the conclusion of the Proceeding I shall:
 - (a) destroy any copy of the Confidential Documents supplied to me, and all copies which I subsequently made, or caused to be made, save for any documents or copies which may be filed in the Fair Work Commission; and
 - (b) destroy any notes, records, memoranda or other documents (including but not limited to any electronic versions of them) created by me, or on my behalf, incorporating or referring to, or derived directly or indirectly from, the Confidential Documents or the Confidential Information.

Signature

Name

Capacity

Date

Definitions

In this undertaking the following definitions apply unless the context requires otherwise:

“Confidential Documents” means:

- the Affidavit of Gavin Girling sworn _____ and filed in the Fair Work Commission on _____ (“**Affidavit**”); and
- any witness statement or written submissions filed in the Proceedings that deal with matters addressed in the Affidavit.

“**Confidential Information**” means the contents of the Confidential Documents.