

From: Christopher Nowland [<mailto:christopher.nowland@harmers.com.au>]
Sent: Friday, 20 October 2017 10:03 AM
To: Chambers - Hatcher VP
Cc: AMOD; Luis Izzo; Kyle Scott; 'kamna.muddagouni@nortonrosefulbright.com'; Michael Harmer; David Bates; Matt Galbraith; Andrew Crabb; Sean.Morrissey@ahansw.com.au; Emily Slaytor
Subject: AM2016/30 Alpine Resorts Award

Dear Ms Hamberger,

AM2016/30 Alpine Resorts Award

You will recall we act for the Australian Ski Areas Association (“**Association**”) in relation to the above matter.

We refer to your email of 18 October 2017 which confirmed the Full Bench had determined not to make the Orders sought pursuant to our earlier application for the production of documents (“**Form F52 Application**”).

While we respectfully accept the Full Bench’s decision, we are nonetheless concerned to correct two specific inaccuracies included in the submission filed by ABL objecting to our Form F52 Application (“**Submission**”). Specifically:

- a. At paragraph 2.3 of the Submission, ABL submits “...*only one witness has stated that the Award coverage was preventing the witness from ‘growing’ their business...*”. In fact, eleven of ABL’s twelve employer witnesses make express reference in their statement to the alleged commercial disadvantage they experience as a result of being covered by Awards other than *Alpine Resorts Award 2010*.
- b. At paragraph 3.5 of the Submission, ABL submits that the Form F52 Application seeks Orders for the production of “...*all advice from accountants, bookkeepers and associations of employers*” (emphasis ABL’s). This submission is demonstrably incorrect, and the draft Order attached to the Form 52 Application properly and appropriately prescribed the range of Documents sought.

As the Association was not afforded an opportunity to respond to ABL’s Submission before a final decision was made, we respectfully attach for the Full Bench’s reference a copy of the Outline of Submissions we had intended to rely upon had such an opportunity been provided.

Finally, given the Full Bench’s observations regarding the earlier Form F52 Application, we now attach a fresh Form F52 Application for the Commission’s earliest possible consideration.

Yours faithfully,

Christopher Nowland
Solicitor

D | M | T +61 2 9267 4322 | **F** +61 2 9264 4295
E christopher.nowland@harmers.com.au | **W** www.harmers.com.au
A Level 27, St Martins Tower, 31 Market Street, Sydney NSW 2000



Outline of Submissions in Support of Form F52 Application for Orders to Produce

1. We refer to the 12 Form F52 Applications for Orders for the Production of Documents that were filed in the above matter on 10 and 12 October 2017, and the subsequent objections raised to those Applications by Australian Business Lawyers & Advisors (“**ABL**”) on behalf of the Australian Business Industrial/the NSW Business Chamber Ltd/Thredbo Chamber of Commerce.
2. As correctly noted by ABL, “the question posed by these proceedings is: what is the appropriate scope of the coverage clause in this Award”?
3. Of ABL’s twelve witnesses, eleven make express reference to the alleged commercial disadvantage they experience as a result of being covered by Awards other than the Alpine Resorts Award 2010 in their witness statement:

a) **Narelle Clark**

(p26) “Given I do so much of the housekeeping work myself (because the weekend penalty rates are so high) it is a challenge to find time to spend on marketing and growing CWA”.

(p27) “I find it very difficult to grow the business and employ more staff because of the high cost of having staff work on weekends. I would prefer to employ more staff on a Saturday, and particularly on a Sunday given all the changeovers, but I cannot afford the wages.”

(p54) “All the private accommodation operators are in a similar situation to me, in that we are competing with Falls Creek SL for staff and are having a difficult time trying to build our business against a very large corporate entity that has a more favourable Modern Award.”

b) **Brett Williams**

(p37) “My personal view is that the alpine industry is not a level playing field.”

(p38) “The lift operators have the benefit of the Alpine Resorts Award 2010 which they hire all of their staff under, not just those working on ski lifts.”

c) Sandra Connor

(p65) “Coupled with the fact KT engages its employees under the more favourable Alpine Resorts Award 2010, it is very difficult for private owners and operators in Thredbo to compete commercially on a level playing field.”

d) Stephen Pennington

(p42) In my opinion it is totally incongruous that the various businesses within an Alpine Resort are required to treat their staff differently, and therefore can have the unintended effect that businesses within one resort are not competing on “an even playing field” from a staffing perspective.”

e) Keith Archibald

(p40) “I do get frustrated paying high penalty rates on a Sunday when it never feels like a Sunday in the Falls Creek Resort Village.”

(p44) “It would be very valuable to be able to improve services while saving on wage costs in the same way as the lift company...can as it engages its employees under the more suitable Alpine Resorts Award 2010.”

f) Nick Cook

(pp 21 and 22) Notes he has no direct competitors, but Falls Creek Alpine Resort (covered by the Alpine Resorts Award 2010) sells takeaway food and chocolate bars, soft drinks and snack foods.

g) Ian Foster

(p49) “It is common knowledge that Kosciusko Thredbo Pty Ltd owns and operates other businesses within the village, many of which operate in competition with the other private business owners in Thredbo.”

(p53) “The TAM service operated by the Thredbo Alpine Hotel is a direct competitor...”

(p55) “I believe TAM employs its employees under the Alpine Resorts Award 2010.”

h) Rob Aivatoglou

(p38) “My biggest competitor is Buller Ski Lifts (BSL)...”

(p40) BSL has a high volume rental set up and the only way I can compete to keep my business running is by hiring more staff and providing a specialized level of service.”

(41) Given I have all of my employees working on a Sunday, this significantly impacts on the level of penalty rates I need to pay under the Retail Award for each employee to work that day.”

i) Gregg Quinn

(p40) “All the private business operators at Thredbo are well aware that KT (Kosciusko Thredbo) owns and operates other business (sic) within the village and many of KT’s businesses operate in competition with the private business owners.”

j) Steve Owen

(p20) “In a small village such as Thredbo, any business which offers food or drinks is a competitor of ours, including grocery stores. This includes all of the restaurants, cafes, and bars in the village, including resort-owned establishments...”

k) John Leggett

(22) “...I have always wondered about the uneven playing field in these cases where the same tasks are taken on one year after the next with a change under two completely different awards and have always considered a different bottom line of wages expenses at the end of each season for the same task.

4. It is disingenuous for ABL to, on the one hand, submit that “...awareness of Alpine Tourism Businesses of the industrial and competitive environment that they were entering into does not help the Commission determine: what should be the industry that is regulated by the Award”¹ while, on the hand submitting eleven witness statements which lament the same industrial and competitive environment.
5. As ABL correctly acknowledges, documents sought by a party pursuant to an Order to Produce must be relevant to the proceedings. However, we note they need not be ‘*directly relevant*’² and that an ‘*apparent relevance*’ is generally sufficient.³ Given the overwhelming majority of ABL’s witnesses specifically refer to the industrial and competitive environment within which they operate – and given the long and well-documented history of Award coverage in the relevant industries and occupations and

¹ ABL submission at 1.10

² Australian Nursing Federation v Victorian Hospitals’ Industrial Association [2011] FWA 8756 at [13] citing *Australian Gas Light Company v Australian Competition & Consumer Commission* [2003] FCA 1101

³ *Clermont Coal Pty Ltd v Brown* [2015] FWCFB 2640 at [19] referencing *Trade Practices Commission v Arnotts Limited* (1989) 88 ALR 90 at 103

the presumably clear exigencies involved in running a business in an alpine area - it is both relevant and appropriate for the Commission to Order production of the documents requested.

6. It is well-established that the range of documents sought must be specified with reasonable particularity.⁴ All of the documentation sought by ASAA has been particularised, and is comprised of records the witnesses should be easily able to ascertain. We comprehensively reject ABL's submission that production of the documents requested would amount to a form of 'harassment'.
7. For the avoidance of doubt, ABL's submission that the Draft Order requests production of 'all advice from accountants, bookkeepers, and associations of employers'⁵ is demonstrably incorrect. The relevant paragraph of the Draft Order has been properly prescribed and reads as follows (emphasis added):

“All Documents evidencing or recording all efforts made by the Respondent *to further develop the Respondent's current business*, including but not limited to

(iii) copies of requests for, and advice from, business development advisors such as marketing agencies, accountants and bookkeepers, and/or associations of employers...”
8. ABL's final submission that, in the event the Commission is minded to approve ASAA's application similar Orders should also be imposed upon ASAA's own members appears to have no ascertainable probative basis whatsoever. Instead, it appears to be a mere – and quite inappropriate exercise in equivalent retaliation which should rightly be dismissed.

HARMERS WORKPLACE LAWYERS

⁴ APESMA v Airly Coal Pty Ltd PR962479 at [12] referencing *Re Clerks' (Alcoa of Australia - Mining and Refining) Consolidated Award 1985*

⁵ ABL submission at 3.5

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	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
Email address	michael.harmer@harmers.com.au		

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

Legal name of business	Harmers Workplace Lawyers
Trading name of business	Harmers Workplace Lawyers
ABN/ACN	60 382 347 618
Contact person	Michael Harmer

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	Australian Business Industrial, the NSW Business Chamber Ltd, and the Thredbo Chamber of Commerce
Name of Respondent from main matter	Australian Ski Areas Association
Commission Matter Number	AM2016/30
Your role in main matter	<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Respondent <input type="checkbox"/> 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.

Please refer to the **attached** Draft Order.

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?

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- (a) compliance with applicable Australian employment law at; and
- (b) seasonal employment patterns within

each the businesses owned and/or operated by the individuals who have provided witness statements in support of the Applicants' application for the extension of coverage of the *Alpine Resorts Award 2010* ("**the Award**").

2. The Applicants, assisted by the witness statements they have filed, submit that members of the Australian Ski Areas Association benefit from an unfair commercial advantage as a consequence of their coverage under the Award.

3. The documents sought will identify:

- (a) Whether the witnesses are now complying – and have historically complied – with their legal obligations under the *Fair Work Act 2009* (Cth), the *Fair Work Regulations 2009* (Cth) and applicable Modern Awards; and

- (b) The seasonal employment patterns within the witnesses' businesses.

4. In summary, the documents sought:

- (a) will assist the Commission to understand the extent to which each of the witnesses complies with applicable Australian employment laws;
- (b) will assist the Commission to understand the employment patterns in each business;
- (c) are all required to be kept by the witnesses as a matter of law; and
- (d) should all be readily-available to the witnesses



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	<i>m. Harmer</i>
Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
	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



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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

Candlelight Lodge
32 Diggings Terrace
PO Box 36
Thredbo NSW 2625

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:
Date:

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 *Vice President Hatcher* on chambers.hatcher.vp@fwc.gov.au

SCHEDULE

1. All Documents created or otherwise maintained by the Respondent in accordance with regulations 3.33-3.41 (inclusive) and regulation 3.46 of the *Fair Work Regulations 2009* during the period from:
 - (a) from 1 June to 30 September 2014; and
 - (b) from 1 June to 30 September 2017.

For the purposes of the above, “*Document*” means any document including, but not necessarily limited to, and item recorded by hand, correspondences, letters, facsimile transmissions, emails, email printouts, memoranda, notes, records, diaries, files, file notes, receipts, invoices, cheques, cheque butts, accounts, accounting records, letters of instruction, bank account statements, reports, witness statements, statutory declarations, affidavits, submissions, audio tapes, videotapes, analogue or digital sound or video recordings, computer printouts, computer disks, SMS messages, maps, drawings, photographs, and all other documents whatsoever whether stored electronically, optically, or otherwise.

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

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

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First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
Email address	michael.harmer@harmers.com.au		

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Trading name of business	Harmers Workplace Lawyers
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Contact person	Michael Harmer

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Your role in main matter	<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Respondent <input type="checkbox"/> Other please specify:

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Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
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PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



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Fair Work Act 2009

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

Applicant(s):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

Chalets Thredbo Pty Ltd
SHOP, 2 Mowamba Place
Thredbo NSW 2625

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:

Date:

Place: Fair Work Commission

Level 10, Terrace Tower
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Phone number	02 9267 4322	Fax number	02 9264 4295
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VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

FSCM Pty Ltd
Aitken Partners Pty Ltd
Lvl 28, 140 William Street
VIC, 3000

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4. In summary, the documents sought:

- (a) will assist the Commission to understand the extent to which each of the witnesses complies with applicable Australian employment laws;
- (b) will assist the Commission to understand the employment patterns in each business;
- (c) are all required to be kept by the witnesses as a matter of law; and
- (d) should all be readily-available to the witnesses



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	<i>m. Harmer</i>
Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
	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



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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

White Winter Investments Pty Ltd
27 Falls Creek Rd
Falls Creek
VIC 3699

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:

Date:

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 *Vice President Hatcher* on chambers.hatcher.vp@fwc.gov.au

SCHEDULE

1. All Documents created or otherwise maintained by the Respondent in accordance with regulations 3.33-3.41 (inclusive) and regulation 3.46 of the *Fair Work Regulations 2009* during the period from:
 - (a) from 1 June to 30 September 2014; and
 - (b) from 1 June to 30 September 2017.

For the purposes of the above, “*Document*” means any document including, but not necessarily limited to, and item recorded by hand, correspondences, letters, facsimile transmissions, emails, email printouts, memoranda, notes, records, diaries, files, file notes, receipts, invoices, cheques, cheque butts, accounts, accounting records, letters of instruction, bank account statements, reports, witness statements, statutory declarations, affidavits, submissions, audio tapes, videotapes, analogue or digital sound or video recordings, computer printouts, computer disks, SMS messages, maps, drawings, photographs, and all other documents whatsoever whether stored electronically, optically, or otherwise.

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	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
Email address	michael.harmer@harmers.com.au		

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

Legal name of business	Harmers Workplace Lawyers
Trading name of business	Harmers Workplace Lawyers
ABN/ACN	60 382 347 618
Contact person	Michael Harmer

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	Australian Business Industrial, the NSW Business Chamber Ltd, and the Thredbo Chamber of Commerce
Name of Respondent from main matter	Australian Ski Areas Association
Commission Matter Number	AM2016/30
Your role in main matter	<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Respondent <input type="checkbox"/> 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.

Please refer to the **attached** Draft Order.

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?

1. The Orders seek the production of documents which evidence the:

- (a) compliance with applicable Australian employment law at; and
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each the businesses owned and/or operated by the individuals who have provided witness statements in support of the Applicants' application for the extension of coverage of the *Alpine Resorts Award 2010* ("**the Award**").

2. The Applicants, assisted by the witness statements they have filed, submit that members of the Australian Ski Areas Association benefit from an unfair commercial advantage as a consequence of their coverage under the Award.

3. The documents sought will identify:

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Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
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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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

Valley Management Pty Ltd
2 Banjo Drive
Thredbo Village
NSW, 2625

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:

Date:

Place: Fair Work Commission
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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

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Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
Email address	michael.harmer@harmers.com.au		

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

Legal name of business	Harmers Workplace Lawyers
Trading name of business	Harmers Workplace Lawyers
ABN/ACN	60 382 347 618
Contact person	Michael Harmer

How would you prefer us to communicate with you?

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

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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	Australian Business Industrial, the NSW Business Chamber Ltd, and the Thredbo Chamber of Commerce
Name of Respondent from main matter	Australian Ski Areas Association
Commission Matter Number	AM2016/30
Your role in main matter	<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Respondent <input type="checkbox"/> Other please specify:

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each the businesses owned and/or operated by the individuals who have provided witness statements in support of the Applicants' application for the extension of coverage of the *Alpine Resorts Award 2010* ("**the Award**").

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Signature	<i>m. Harmer</i>
Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
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PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

Mount Beauty Supermarket Pty Ltd
Unit 8, 21-23 Reid Street
Wangaratta
VIC, 3677

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:

Date:

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*].
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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

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First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
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If the party applying for an order is a company or organisation please also provide the following details

Legal name of business	Harmers Workplace Lawyers
Trading name of business	Harmers Workplace Lawyers
ABN/ACN	60 382 347 618
Contact person	Michael Harmer

How would you prefer us to communicate with you?

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The Commission matter that this application relates to

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

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Commission Matter Number	AM2016/30
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Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
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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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

Cedarwood Apartments
05 Schuss Street
Falls Creek
VIC 3699

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:

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Level 10, Terrace Tower
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Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
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Trading name of business	Harmers Workplace Lawyers
ABN/ACN	60 382 347 618
Contact person	Michael Harmer

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Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
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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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

Summit Ridge Alpine Lodge
8 Schuss St
Falls Creek
VIC 3699

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:

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Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
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- (a) compliance with applicable Australian employment law at; and
- (b) seasonal employment patterns within

each the businesses owned and/or operated by the individuals who have provided witness statements in support of the Applicants' application for the extension of coverage of the *Alpine Resorts Award 2010* ("**the Award**").

2. The Applicants, assisted by the witness statements they have filed, submit that members of the Australian Ski Areas Association benefit from an unfair commercial advantage as a consequence of their coverage under the Award.

3. The documents sought will identify:

- (a) Whether the witnesses are now complying – and have historically complied – with their legal obligations under the *Fair Work Act 2009* (Cth), the *Fair Work Regulations 2009* (Cth) and applicable Modern Awards; and

- (b) The seasonal employment patterns within the witnesses' businesses.

4. In summary, the documents sought:

- (a) will assist the Commission to understand the extent to which each of the witnesses complies with applicable Australian employment laws;
- (b) will assist the Commission to understand the employment patterns in each business;
- (c) are all required to be kept by the witnesses as a matter of law; and
- (d) should all be readily-available to the witnesses



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	<i>m. Harmer</i>
Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
	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



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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

Hidali Pty Ltd
Lvl 1, 25 Argon Street
Sumner
QLD 4074

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:
Date:

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 *Vice President Hatcher* on chambers.hatcher.vp@fwc.gov.au

SCHEDULE

1. All Documents created or otherwise maintained by the Respondent in accordance with regulations 3.33-3.41 (inclusive) and regulation 3.46 of the *Fair Work Regulations 2009* during the period from:
 - (a) from 1 June to 30 September 2014; and
 - (b) from 1 June to 30 September 2017.

For the purposes of the above, “*Document*” means any document including, but not necessarily limited to, and item recorded by hand, correspondences, letters, facsimile transmissions, emails, email printouts, memoranda, notes, records, diaries, files, file notes, receipts, invoices, cheques, cheque butts, accounts, accounting records, letters of instruction, bank account statements, reports, witness statements, statutory declarations, affidavits, submissions, audio tapes, videotapes, analogue or digital sound or video recordings, computer printouts, computer disks, SMS messages, maps, drawings, photographs, and all other documents whatsoever whether stored electronically, optically, or otherwise.

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	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
Email address	michael.harmer@harmers.com.au		

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

Legal name of business	Harmers Workplace Lawyers
Trading name of business	Harmers Workplace Lawyers
ABN/ACN	60 382 347 618
Contact person	Michael Harmer

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	Australian Business Industrial, the NSW Business Chamber Ltd, and the Thredbo Chamber of Commerce
Name of Respondent from main matter	Australian Ski Areas Association
Commission Matter Number	AM2016/30
Your role in main matter	<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Respondent <input type="checkbox"/> 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.

Please refer to the **attached** Draft Order.

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?

1. The Orders seek the production of documents which evidence the:

- (a) compliance with applicable Australian employment law at; and
- (b) seasonal employment patterns within

each the businesses owned and/or operated by the individuals who have provided witness statements in support of the Applicants' application for the extension of coverage of the *Alpine Resorts Award 2010* ("**the Award**").

2. The Applicants, assisted by the witness statements they have filed, submit that members of the Australian Ski Areas Association benefit from an unfair commercial advantage as a consequence of their coverage under the Award.

3. The documents sought will identify:

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4. In summary, the documents sought:

- (a) will assist the Commission to understand the extent to which each of the witnesses complies with applicable Australian employment laws;
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Disclosure of information

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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	<i>m. Harmer</i>
Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
	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



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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

George's Ski Hire Pty Ltd
6 Riverside Quay
Southbank
VIC 3006

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:

Date:

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

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Party applying for an order



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

Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
Email address	michael.harmer@harmers.com.au		

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

Legal name of business	Harmers Workplace Lawyers
Trading name of business	Harmers Workplace Lawyers
ABN/ACN	60 382 347 618
Contact person	Michael Harmer

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	Australian Business Industrial, the NSW Business Chamber Ltd, and the Thredbo Chamber of Commerce
Name of Respondent from main matter	Australian Ski Areas Association
Commission Matter Number	AM2016/30
Your role in main matter	<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Respondent <input type="checkbox"/> Other please specify:

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Signature	<i>m. Harmer</i>
Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
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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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

Thredbo Burger Bar Pty Ltd
192 Hume Street
Toowoomba City
Qld 4350

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:

Date:

Place: Fair Work Commission
Level 10, Terrace Tower
80 William Street
East Sydney, NSW 2011

Member

- Note:
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First name(s)	Michael		
Surname	Harmer		
Postal address	PO Box Q548		
Suburb	QVB		
State or territory	NSW	Postcode	1230
Phone number	02 9267 4322	Fax number	02 9264 4295
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If the party applying for an order is a company or organisation please also provide the following details

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ABN/ACN	60 382 347 618
Contact person	Michael Harmer

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Name of Respondent from main matter	Australian Ski Areas Association
Commission Matter Number	AM2016/30
Your role in main matter	<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Respondent <input type="checkbox"/> Other please specify:

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Signature	<i>m. Harmer</i>
Name	Michael Harmer
Date	20 October 2017
Capacity / Position	Principal
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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):

Australian Business Industrial
The NSW Business Chamber Ltd
Thredbo Chamber of Commerce

v

Respondent(s):

The Australian Ski Areas Association

Commission Matter No: 2016/30

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER RIORDAN

DATE 2017

TO: THE PROPER OFFICER

DPSI General Pty Ltd
The General Great Alpine Road
Mount Hotham
VIC 3741

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:

Date:

Place: Fair Work Commission
Level 10, Terrace Tower
80 William Street
East Sydney, NSW 2011

Member

- Note:
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