

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	██████████	Fax number	██████████
Email address	██		

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) historical due diligence;
- (b) industrial relations compliance;
- (c) business planning; and
- (d) recent and current financial viability

of 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. Further, a number of the witnesses put forward by the Applicants submit they experience ongoing difficulty in growing their business and/or attracting and retaining suitable employees as a consequence of the existing coverage of the Award.

4. In addition, the Applicants assert the work performed by retail and hospitality workers employed by private businesses located in or near those resorts which include alpine lifting

facilities should be '*differentiated*' from the types of work performed in '*ordinary retail and hospitality businesses*'.

5. The Respondent respectfully submits the above assertions are disingenuous, insofar as the nature of the alpine resort environment – and the unique exigencies created by that environment – were clearly understood by, or should reasonably have been apparent to, those employers who now seek an extension of the Award's coverage.
6. The documents sought will identify:
- (a) what steps, if any, were taken by the witnesses to assess the likely economic viability of their business prior to their decision to purchase and/or open their current business;
 - (b) what steps, if any, were taken by the witnesses to identify and comply with the industrial instruments which would apply as a matter of law to their employees, both prior to their decision to purchase and/or open their current business and/or following the conclusion of the Award Modernisation process; and
 - (c) what steps, if any, have been taken by the witnesses to develop their business; and
 - (d) the current economic viability of each business.
7. In summary, the documents sought will assist the Commission to understand the extent to which each of the witnesses:
- (a) undertook due diligence;
 - (b) has attempted to comply with all applicable industrial instruments;
 - (c) has sought to grow their business;
 - (d) is operating a profitable business; and
 - (e) is operating a business which can be differentiated from the rationale behind the existing scope of the Award.



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	Michael Harmer
Date	09 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

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: 5:00 pm
Date: 24 October 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 *Vice President Hatcher* on chambers.hatcher.vp@fwc.gov.au

SCHEDULE

1. (a) All Documents reviewed during the due diligence undertaken by the Respondent prior to the purchase and/or the opening of the Respondent's current business, including but not limited to:
 - (i) copies of leases;
 - (ii) copies of profit and loss statements for the previous three (3) years;
 - (iii) copies of balance sheets for the previous three (3) years;
 - (iv) copies of bank statements for the previous three (3) years;
 - (v) copies of tax returns for the previous three (3) years; and
 - (vi) copies of pre-existing business plans;
 - (b) All Documents recording evidence of:
 - (i) enquiries made by the Respondent into the validity and accuracy of existing employee contracts (where such contracts were written), and all pre-existing terms and conditions of employment of all existing employees; and
 - (ii) asset, stock, and/or equipment audits being undertaken by the Respondent and subsequently independently assessedprior to the purchase and/or the opening of the Respondent's current business.
 - (c) 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:
 - (i) the past six (6) months; and
 - (ii) the period from 1 January 2014 to 30 June 2014 (inclusive).
2. All Documents evidencing or recording all efforts made by the Respondent to:
 - (a) correctly identify; and
 - (b) ensure full compliance withall applicable industrial instruments, including but not limited to awards, workplace agreements (both collective and individual), letters of offer and contracts of employment
 - (a) prior to the purchase and/or opening of the Respondent's current business; and
 - (b) during and after the completion of the Award Modernisation Process, as defined by section 12 of the *Fair Work Act 2009*including but not limited to:
 - (a) records of telephone and/or written enquiries made to the Fair Work Ombudsman (and any of its predecessors); and
 - (b) records of telephone and/or written enquiries made to an association of employers, irrespective of whether that association of employees is federally registrable pursuant to the *Fair Work (Registered Organisations) Act 1999* or registered under a state or territory industrial law.
 3. (a) All Documents evidencing or recording all efforts made by the Respondent to

further develop the Respondent's current business, including but not limited to:

- (i) current and/or superseded business plans;
- (ii) current and/or superseded marketing plans;
- (iii) copies of requests for, and advice from, business development advisors such as marketing agencies, accountants and bookkeepers, and/or associations of employers, irrespective of whether the association of employees is federally registrable pursuant to the *Fair Work (Registered Organisations) Act 1999* or registered under a state or territory industrial law.

(b) All Documents evidencing or recording:

- (i) attendance by Narelle Therese Clarke at any business development-related conference or event; and
- (ii) any formal study undertaken, or recognised qualifications received, by Narelle Therese Clarke in a business development-related discipline, such as marketing or communications.

(c) All Documents evidencing or recording:

- (i) the current leasing arrangement of the Respondent's business;
- (ii) prior and/or superseded leases which applied to the Respondent's business during the past five (5) years;
- (iii) negotiations relating to the terms of the current lease; and
- (iv) negotiations relating to the terms of prior and/or superseded leases during the past five (5) years.

4. All Documents evidencing or recording the:

- (a) current; and
- (b) previous five (5) years'

finances of the Respondent's current business, including but not limited to:

- (a) completed and lodged tax returns;
- (b) profit and loss statements;
- (c) balance sheets;
- (d) bank statements.

5. All Documents relating to any submissions made by the Respondent to secure new or continued financing of the Respondent's current business during the past five (5) years.

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.