

From: Sam Cahill <Sam.Cahill@ablawyers.com.au>
Sent: Thursday, 11 June 2020 5:05 PM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>
Cc: AMOD <AMOD@fwc.gov.au>; Michael Robson <mrobson@asu.asn.au>; Rachel Liebhaber <rachell@hsu.net.au>; Stephen Bull <Stephen.Bull@unitedworkers.org.au>; Nigel Ward <Nigel.Ward@ablawyers.com.au>; Julian Arndt <Julian.Arndt@ablawyers.com.au>; Dean Tyler <Dean.Tyler@ablawyers.com.au>; peggms24@gmail.com; Ruchi Bhatt <Ruchi.Bhatt@aigroup.com.au>; Brent Ferguson <Brent.Ferguson@aigroup.com.au>; Paula Thomson <Paula.Thomson@afei.org.au>; shue.yin.lo@afei.org.au; mrizzo@asu.asn.au
Subject: RE: AM2020/18 - s 157 SCHADS App

Dear Associate

We refer to the emails from the Fair Work Commission on 5 June and 10 June 2020.

We have had discussions with the ASU about our applications in respect of "Lifestyle Solutions" and "Aruma Services". Unfortunately, we have not been able to reach an agreement.

Following those discussions, we have prepared revised versions of the two applications. **Attached** for filing with the Commission are the revised applications.

We note that the orders sought in the applications have been amended as follows:

1. ~~All Documents recording or evidencing~~ **XX's** *official* policies, procedures or practices as at 1 January 2020 that related to any of the following subject-matters:
 - a) *the control of infectious diseases in the workplace;*
 - b) *the use of personal protective equipment;*
 - c) *the provision of support or treatment to people who are unwell;*
 - d) *the provision of support or treatment to people who are suspected of having an infectious disease; and*
 - e) *the provision of support or treatment to people who are confirm as having an infectious disease.*
2. ~~All Documents recording or evidencing~~ **XX's** *current* *official* policies, procedures or practices that relate to any of the following subject-matters:
 - a) *the control of infectious diseases, including COVID-19;*
 - b) *the use of personal protective equipment;*
 - c) *the provision of support or treatment to people who are unwell;*
 - d) *the provision of support or treatment to people are suspected of having an infectious disease, including COVID-19; and*
 - e) *the provision of support or treatment to people are confirmed as having an infectious disease, including COVID-19.*
3. *All Documents recording or relating to communications* **from XX** *concerning increasing employee's wages as a result of the employee having to work with clients who have COVID-19 or are suspected of having COVID-19.*
4. *All Documents recording or relating to any incidents in which* ~~a an-employee, client or patient~~ **of XX:**
 - a) *contracted COVID-19; or*
 - b) *was required to self-isolate because he or she might have contracted COVID-19; or.*

- ~~e) was tested for COVID-19.~~
5. *In producing the Documents specified in Orders 1, 2, 3 and 4:*
- a) **XX** *must redact the names and addresses (and any other identifying information) of any employee identified in the Documents; and*
 - b) **XX** *must redact any health information that is not relevant to COVID-19.*
6. *In producing the Documents specified in Order 4, **XX** must also replace any redacted employee names with pseudonyms, such as "Employee A", "Employee B".*

We consider that the amendments are sufficient to address any concerns about privacy/confidentiality while also reducing the administrative burden on the relevant organisations.

We have not received any objections from Lifestyle Solutions or Aruma Services.

Kind regards

Sam

Sam Cahill

Senior Associate

Australian Business Lawyers & Advisors

140 Arthur Street North Sydney NSW 2060

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Tel: +612 9458 7005 | Web: www.ablawyers.com.au |

Form F52 – Application for an order for production of documents, records or information to the 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 (Commission) for an order under s.590(2)(c) of the [Fair Work Act 2009](#) requiring a person to produce documents, records or other information to the Commission.

The Applicant

If the Applicant is not an individual, provide the following details:

Legal name	Australian Business Industrial (ABI) & New South Wales Business Chamber (NSWBC)		
ACN (if a company)	N/A		
ABN (if applicable)	ABN 59 687 108 073; ABN 78 638 594 704		
Trading name or registered business name (if applicable)	N/A		
Contact person	Sam Cahill		
Postal address	Level 15, 140 Arthur Street		
Suburb	North Sydney		
State or territory	NSW	Postcode	2060
Phone number	02 9458 7005	Fax number	N/A
Email address	sam.cahill@ablawyer.com.au		

Which party is the Applicant?

- Applicant
- Respondent
- Other

If you answered **other** – Provide details.

The Commission matter that this application relates to

Matter name	Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010
Matter number	AM2020/18

1. The Application

1.1 What documents, records or other information are being sought?

ABI and NSWBC seek the following Documents from Lifestyle Solutions (Aust) Ltd T/A Lifestyle Solutions (**Lifestyle Solutions**):

1. Lifestyle Solutions' official policies, procedures or practices as at 1 January 2020 that related to any of the following subject-matters:
 - a) the control of infectious diseases in the workplace;
 - b) the use of personal protective equipment;
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people who are suspected of having an infectious disease; and
 - e) the provision of support or treatment to people who are confirm as having an infectious disease.
2. Lifestyle Solutions' current official policies, procedures or practices that relate to any of the following subject-matters:
 - a) the control of infectious diseases, including COVID-19;
 - b) the use of personal protective equipment;
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people are suspected of having an infectious disease, including COVID-19; and
 - e) the provision of support or treatment to people are confirmed as having an infectious disease, including COVID-19.
3. All Documents recording or relating to communications from Lifestyle Solutions concerning increasing employee's wages as a result of the employee having to work with clients who have COVID-19 or are suspected of having COVID-19.
4. All Documents recording or relating to any incidents in which a client of Lifestyle Solutions:
 - a) contracted COVID-19; or
 - b) was required to self-isolate because he or she might have contracted COVID-19.
5. In producing the Documents specified in Orders 1, 2, 3 and 4:
 - a) Lifestyle Solutions must redact the names and addresses (and any other identifying information) of any employee identified in the Documents; and
 - b) Lifestyle Solutions must redact any health information that is not relevant to COVID-19.
6. In producing the Documents specified in Order 4, Lifestyle Solutions must also replace any redacted employee names with pseudonyms, such as "Employee A", "Employee B".

In the above, "Document" means any document including, without limitation, any handwriting, correspondences, letter, facsimile transmissions, emails, printouts of emails, 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 and all other documents whatsoever whether stored electronically, optically or otherwise.

1.2 Why are the documents, records or other information being sought?

1. The Australian Municipal, Administrative, Clerical and Services Union, the Health Services, the Union United Workers Union and National Disability Services (the **Unions**) have made an application to vary the Social, Community, Home Care and Disability Services Industry Award 2010.
2. In support of the application, the Unions filed a number of witness statements, including a witness statement by Andrew Hyland (the **Statement**).
3. In the Statement, the witness gives evidence in relation to:
 - the impact of COVID-19 on the operations of the Organisation; and
 - the steps taken by the Organisation in response to COVID-19.
4. ABI and NSWBC are opposing the application made by the Unions.
5. ABI and NSWBC seek the documents set out in this Application because the documents will allow ABI and NSWBC to:
 - test the evidence given by the witness;
 - test the assertions made by the Unions in their application and submissions; and
 - obtain evidence that will be relevant to our response to the application (being evidence that we have been unable to obtain from the Organisation on a voluntary basis).

1.3 How will the documents, records or other information assist the Commission in reaching a decision?

1. The documents and information will assist the Commission in determining:
 - the accuracy, relevance and reliability of the evidence set out in the relevant witness statement; and
 - (more broadly) whether the evidence filed by the Unions is “cogent evidence” that the variations sought are necessary to achieve the modern award objectives.
2. The documents and information will assist ABI and NSWBC in preparing their submissions and evidence in reply to the application, which will address the modern award objectives. This in turn will assist the Commission in considering the merits of the application.
3. The documents will assist the Commission to answer some of the questions posed in their Statement of 5 May 2020.

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

Signature	SC
Name	Sam Cahill (Senior Associate - Australian Business Lawyers & Advisors)
Date	11 June 2020
Capacity/ Position	Representative for ABI and NSWBC in AM2020/18

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



DRAFT ORDER

Fair Work Act 2009

s.158—variation of a modern award to achieve the modern awards objective

Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010

(AM2020/18)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE

DATE

TO: Lifestyle Solutions (Aust) Ltd (**Lifestyle Solutions**)

33 Fern Street, Islington NSW 2296

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: Tuesday, 16 June 2020

Place: Fair Work Commission Sydney Registry via email
(sydney@fwc.gov.au)

Member Note: This order has been issued at the request of Australian Business Industrial and the New South Wales Business Chamber.

You can apply to have this order set aside or varied.

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. Lifestyle Solutions' official policies, procedures or practices as at 1 January 2020 that related to any of the following subject-matters:
 - a) the control of infectious diseases in the workplace;
 - b) the use of personal protective equipment;
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people who are suspected of having an infectious disease; and
 - e) the provision of support or treatment to people who are confirm as having an infectious disease.
2. Lifestyle Solutions' current official policies, procedures or practices that relate to any of the following subject-matters:
 - a) the control of infectious diseases, including COVID-19;
 - b) the use of personal protective equipment;
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people are suspected of having an infectious disease, including COVID-19; and
 - e) the provision of support or treatment to people are confirmed as having an infectious disease, including COVID-19.
3. All Documents recording or relating to communications from Lifestyle Solutions concerning increasing employee's wages as a result of the employee having to work with clients who have COVID-19 or are suspected of having COVID-19.
4. All Documents recording or relating to any incidents in which a client of Lifestyle Solutions:
 - a) contracted COVID-19; or
 - b) was required to self-isolate because he or she might have contracted COVID-19.
5. In producing the Documents specified in Orders 1, 2, 3 and 4:
 - a) Lifestyle Solutions must redact the names and addresses (and any other identifying information) of any employee identified in the Documents; and
 - b) Lifestyle Solutions must redact any health information that is not relevant to COVID-19.
6. In producing the Documents specified in Order 4, Lifestyle Solutions must also replace any redacted employee names with pseudonyms, such as "Employee A", "Employee B".

In the above, "Document" means any document including, without limitation, any handwriting, correspondences, letter, facsimile transmissions, emails, printouts of emails, 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 and all other documents whatsoever whether stored electronically, optically or otherwise.

Form F52 – Application for an order for production of documents, records or information to the 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 (Commission) for an order under s.590(2)(c) of the [Fair Work Act 2009](#) requiring a person to produce documents, records or other information to the Commission.

The Applicant

If the Applicant is not an individual, provide the following details:

Legal name	Australian Business Industrial (ABI) & New South Wales Business Chamber (NSWBC)		
ACN (if a company)	N/A		
ABN (if applicable)	ABN 59 687 108 073; ABN 78 638 594 704		
Trading name or registered business name (if applicable)	N/A		
Contact person	Sam Cahill		
Postal address	Level 15, 140 Arthur Street		
Suburb	North Sydney		
State or territory	NSW	Postcode	2060
Phone number	02 9458 7005	Fax number	N/A
Email address	sam.cahill@ablawyers.com.au		

Which party is the Applicant?

- Applicant
 Respondent
 Other

If you answered **other** – Provide details.

The Commission matter that this application relates to

Matter name	Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010
Matter number	AM2020/18

1. The Application

1.1 What documents, records or other information are being sought?

ABI and NSWBC seek the following Documents from Aruma Services:

1. Aruma Services' official policies, procedures or practices as at 1 January 2020 that related to any of the following subject-matters:
 - a) the control of infectious diseases in the workplace;
 - b) the use of personal protective equipment;
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people who are suspected of having an infectious disease; and
 - e) the provision of support or treatment to people who are confirm as having an infectious disease.
2. Aruma Services' current official policies, procedures or practices that relate to any of the following subject-matters:
 - a) the control of infectious diseases, including COVID-19;
 - b) the use of personal protective equipment;
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people are suspected of having an infectious disease, including COVID-19; and
 - e) the provision of support or treatment to people are confirmed as having an infectious disease, including COVID-19.
3. All Documents recording or relating to communications from Aruma Services concerning increasing employee's wages as a result of the employee having to work with clients who have COVID-19 or are suspected of having COVID-19.
4. All Documents recording or relating to any incidents in which a client of Aruma Services:
 - a) contracted COVID-19; or
 - b) was required to self-isolate because he or she might have contracted COVID-19.
5. In producing the Documents specified in Orders 1, 2, 3 and 4:
 - a) Aruma Services must redact the names and addresses (and any other identifying information) of any employee identified in the Documents; and
 - b) Aruma Services must redact any health information that is not relevant to COVID-19.
6. In producing the Documents specified in Order 4, Aruma Services must also replace any redacted employee names with pseudonyms, such as "Employee A", "Employee B".

In the above, "Document" means any document including, without limitation, any handwriting, correspondences, letter, facsimile transmissions, emails, printouts of emails, 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 and all other documents whatsoever whether stored electronically, optically or otherwise.

1.2 Why are the documents, records or other information being sought?

1. The Australian Municipal, Administrative, Clerical and Services Union, the Health Services, the Union United Workers Union and National Disability Services (the **Unions**) have made an application to vary the Social, Community, Home Care and Disability Services Industry Award 2010.
2. In support of the application, the Unions filed a number of witness statements, including a witness statement by Andrew Richardson (the **Statement**).
3. In the Statement, the witness gives evidence in relation to:
 - the impact of COVID-19 on the operations of the Organisation; and
 - the steps taken by the Organisation in response to COVID-19.
4. ABI and NSWBC are opposing the application made by the Unions.
5. ABI and NSWBC seek the documents set out in this Application because the documents will allow ABI and NSWBC to:
 - test the evidence given by the witness;
 - test the assertions made by the Unions in their application and submissions; and
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1.3 How will the documents, records or other information assist the Commission in reaching a decision?

1. The documents and information will assist the Commission in determining:
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3. The documents will assist the Commission to answer some of the questions posed in their Statement of 5 May 2020.

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

Signature	SC
Name	Sam Cahill (Senior Associate - Australian Business Lawyers & Advisors)
Date	11 June 2020
Capacity/ Position	Representative for ABI and NSWBC in AM2020/18

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DRAFT ORDER

Fair Work Act 2009

s.158—variation of a modern award to achieve the modern awards objective

Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010

(AM2020/18)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE

XX JUNE 2020

TO: Aruma Services (**Aruma**)

49 Blackbutts Road, Belrose 2085, Australia

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: Tuesday, 16 June 2020

Place: Fair Work Commission Sydney Registry via email
(sydney@fwc.gov.au)

Member Note: This order has been issued at the request of Australian Business Industrial and the New South Wales Business Chamber.

You can apply to have this order set aside or varied.

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. Aruma Services' official policies, procedures or practices as at 1 January 2020 that related to any of the following subject-matters:
 - a) the control of infectious diseases in the workplace;
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 - d) the provision of support or treatment to people who are suspected of having an infectious disease; and
 - e) the provision of support or treatment to people who are confirm as having an infectious disease.
2. Aruma Services' current official policies, procedures or practices that relate to any of the following subject-matters:
 - a) the control of infectious diseases, including COVID-19;
 - b) the use of personal protective equipment;
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people are suspected of having an infectious disease, including COVID-19; and
 - e) the provision of support or treatment to people are confirmed as having an infectious disease, including COVID-19.
3. All Documents recording or relating to communications from Aruma Services concerning increasing employee's wages as a result of the employee having to work with clients who have COVID-19 or are suspected of having COVID-19.
4. All Documents recording or relating to any incidents in which a client of Aruma Services:
 - a) contracted COVID-19; or
 - b) was required to self-isolate because he or she might have contracted COVID-19.
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