

**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.)

**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)

**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: 3pm AEDT

Date: Thursday, 23 November

Place: Electronically to chambers.kovacic.dp@fwc.gov.au AND in person  
Terrace Tower, 80 William Street, East Sydney

Dated: 21 November 2017



Note:

- This order has been issued at the request of Applicant with consent of the Unions.
- You can apply to have this order set aside or varied.

## FAIR WORK COMMISSION

- 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 (**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.



## About the F52 Application Form

---

### **Privacy**

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy Notice](#) for this form, or ask for a hard copy to be provided to you.