

**From:** [Trent.Sebbens@ashurst.com](mailto:Trent.Sebbens@ashurst.com) [<mailto:Trent.Sebbens@ashurst.com>]

**Sent:** Thursday, 9 November 2017 1:22 PM

**To:** Chambers - Kovacic DP

**Cc:** [Adrian.Morris@ashurst.com](mailto:Adrian.Morris@ashurst.com); [Elysse.Lloyd@ashurst.com](mailto:Elysse.Lloyd@ashurst.com);  
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[gunzburg@bigpond.net.au](mailto:gunzburg@bigpond.net.au)

**Subject:** AM2014/190 – Four Yearly Review of Modern Awards – Transitional Provisions – Accident Pay Provisions [BD-CM.30002560.02-3000-0722]

Dear Associate

**AM2014/190 – Four yearly review of modern awards – Transitional provisions – Accident pay provisions – Black Coal Mining Industry Award**

We confirm that we act for the Coal Mining Industry Employer Group (**CMIEG**).

We **attach**, by way of filing, an Application for order for production of documents etc to the Fair Work Commission in respect of Coal Mines Insurance Pty Limited. For convenience, we have also attached an electronic copy of the Draft Order.

This application is made by the CMIEG, with the consent of the CFMEU, APESMA and AMWU. We have copied this correspondence to the representatives for the CFMEU, APESMA and AMWU.

Please contact us if you have any questions concerning the application.

Yours sincerely

**Trent Sebbens**

Partner

[trent.sebbens@ashurst.com](mailto:trent.sebbens@ashurst.com)

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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

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              | [ X ] Mr [ ] Mrs [ ] Ms [ ] Other please specify: |            |                |
| First name(s)      | Trent   |            |                |
| Surname            | Sebbens   |            |                |
| Postal address     | Ashurst Australia<br>Level 11, 5 Martin Place     |            |                |
| Suburb             | Sydney  |            |                |
| State or territory | NSW   | Postcode   | 2000           |
| Phone number       | (02) 9258 6313                                    | Fax number | (02) 9258 6999 |
| Email address      | trent.sebbens@ashurst.com                         |            |                |

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

|                          |  |
|--------------------------|--|
| Legal name of business   | The group known as the "Coal Mine Industry Employer Group" (consisting of Anglo American Australia Limited; BHP Billiton Limited; Curragh Queensland Mining Pty Ltd; Centennial Coal Company Limited; Ensham Resources Pty Limited; Fitzroy Australia Resources Pty Ltd; Glencore Coal Pty Limited; Jellinbah Resources Pty Ltd; Peabody Energy Australia Coal Pty Limited; Rio Tinto Coal Australia Pty Limited; South32 Limited; Whitehaven Coal Mining Limited; Yancoal Australia Limited, and each of their associated entities operating in the black coal mining industry) |
| Trading name of business | Coal Mine Industry Employer Group  |
| ABN/ACN                  | 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)

Contact person Trent Sebbens, Partner (Ashurst Australia)

**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 Coal Mining Industry Employer Group

Name of Respondent from main matter Construction, Forestry, Mining and Energy Union (**CFMEU**)  
 The Association of Professionals, Engineers, Scientists and Managers, Australia (**APESMA**)  
 "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (**AMWU**) (**AMWU**)

Commission Matter Number AM2014/190

Your role in main matter  Applicant  Respondent  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.

See attached schedule

**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?

The information and documents to be produced concern claims for workers compensation and "accident pay", the period over which workers compensation and accident pay are made in respect of claims, and an update to the data previously produced in this matter relating to these matters in respect of an Order issued on 8 December 2016 to Coal Mines Insurance Pty Limited by the Fair

Work Commission.

The information is sought from the compulsory insurer for workers compensation in the black coal mining industry in NSW, Coal Mines Insurance Pty Ltd (ACN 000 011 727), being the "workers compensation company" approved under section 9 of the *Coal Industry Act 2001* (NSW) for the purposes of the *Workers Compensation Act 1987* (NSW) and the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

The information is relevant to the assessment of the application by the CMIEG to vary the terms of clause 18 – Accident Pay of the Black Coal Mining Industry Award [MA000001], to provide for an accident pay entitlement of 52 weeks.

The Application is made with the consent of the CFMEU, APESMA and AMWU.



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  | Trent Sebbens  |
| Date  | 9 November 2017  |
| Capacity / Position   | Partner, Ashurst Australia<br>(Solicitors for the CMIEG)   |
|  | 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 <b>Capacity/Position</b> 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):**

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)

Commission Matter No:

AM2014/190 – Four yearly review of modern awards – Accident pay – Transitional provisions (Black Coal Mining Industry Award)

COMMISSION MEMBER

DATE

TO: Coal Mines Insurance Pty Limited  
Level 21, 44 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: 4.00pm  
Date: Monday, 20 November 2016  
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 *[member]* on *[chamber's email]*.

## SCHEDULE

1. Item 5 of the Order issued on 8 December 2016 to Coal Mines Insurance Pty Limited 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."*

Please provide an updated response for the years 2015 and 2016, and in addition provide information in response to this item for the year 2017.

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 Coal Mines Insurance Pty Limited (**CMI**) on 4 January 2017 stating the item sought data relating to *"each injury which occurred in ... each "accident year" "*.

Please provide an updated response for the years 2015 and 2016, and in addition provide information in response to this item for the year 2017, in accordance with the clarification provided.

3. In respect of the claims for workers' compensation under insurance policies held with CMI, in relation to which any payments for accident pay that were made that were indemnified under policies held with CMI, please provide data showing the length of time taken for the injured worker to return to work for each injury which occurred in each accident year, for the period of time 1973 to 2016.

(Note: Subject to the way in which the data is recording by CMI, it is preferable that data is provided that separately identifies durations of time off work in one week intervals).

### 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.