

## 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.

Postal address	Level 1, 491 Kent Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	(02) 9263 6540	Fax number	N/A
Email address	<a href="mailto:infocsd@professionalsaustralia.org.au">infocsd@professionalsaustralia.org.au</a> ; <a href="mailto:aguy@professionalsaustralia.org.au">aguy@professionalsaustralia.org.au</a>		

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

Legal name of business	The Association of Professional Engineers, Scientists and Managers, Australia
Trading name of business	As Above
ABN/ACN	99 589 872 974
Contact person	Adam Guy

### 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	The Association of Professional Engineers, Scientists and Managers Australia & Ors
Commission Matter Number	AM2014/190
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.

1. In respect of the statements of Mr David Gunzburg dated 24 February 2017 and 18 August 2017:
  - a. any correspondence between the CMIEG or any member of the CMIEG or the solicitors for the CMIEG and Mr David Gunzburg, including without limitation:
    - i. any letter of instruction to Mr David Gunzburg; and
    - ii. any letter of engagement of Mr David Gunzburg.
  - b. any material relied upon by Mr David Gunzburg in preparing his statement; and
  - c. any draft of the statement of Mr David Gunzburg.
2. In respect of the letter/report of Dr Keith Adam dated 28 February 2017:
  - a. any correspondence between the CMIEG or any member of the CMIEG or the solicitors for the CMIEG and Dr Adam; and
  - b. any material relied upon by Dr Adam in preparing his statement; and
  - c. any draft of the letter/report of Dr Adam.
3. In respect of each CMIEG Member:
  - a. any document which records or refers to a payment of accident pay to an Employee; and
  - b. any employment contract to which the CMIEG Member and an Employee are party and which contains one or more terms dealing with accident pay.

## 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.
  - a. Correspondence between the CMIEG and Mr David Gunzburg is sought because it is relevant to understanding the parameters of Mr Gunzburg's preparation and research in preparing his statements for the purposes of proceedings;
  - b. Any material relied upon by Mr David Gunzburg in preparing his statement is sought because it is relevant to understanding the factual basis on which he relied when preparing his statements for the purposes of proceedings; and
  - c. Any draft of the statement of Mr David Gunzburg is sought because it is relevant to understanding what, if any changes to Mr Gunzburg's advice occurred in the course of preparing his statements for the Commission.

2.
  - a. Correspondence between the CMIEG and Dr Kieth Adam is sought because it is relevant to understanding the parameters of Dr Adam’s preparation and research in preparing his letter/report for the purposes of proceedings;
  - b. Any material relied upon by Dr Keith Adam in preparing his statement is sought because it is relevant to understanding the factual basis on which he relied when preparing his letter/report for the purposes of proceedings; and
  - c. Any draft of the statement of Dr Keith Adam is sought because it is relevant to understanding what, if any changes to Dr Adam’s advice occurred in the course of preparing his statements for the Commission.
  
3.
  - a. Documents which records or refers to payment of accident pay to an employee is sought because it is relevant to the Commission obtaining a proper picture of how a payment under the accident pay regime is made; and
  - b. Contracts which contain one or more terms relating to accident pay are sought because it is relevant to understanding how employees (whether award covered or not) are awarded accident pay.



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	Adam Guy
Date	13 September 2017
Capacity / Position	Legal Officer
	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 Mining Industry Employer Group**

**v**

**Respondent(s): The Association of Professional Engineers, Scientists and Managers, Australia & Ors**

Commission Matter No: AM2014/190

[COMMISSION MEMBER]

[DATE]

TO: The Coal Mining Industry Employer Group by its proper officer  
c/o Adrian Morris  
Ashurst Australian  
Level 9, 5 Martin Place  
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:  
Date:  
Place:

Member

Note:

- This order has been issued at the request of APESMA.
- 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 Deputy President Kovacic on [Chambers.Kovacic.DP@fwc.gov.au](mailto:Chambers.Kovacic.DP@fwc.gov.au).

## SCHEDULE

In the following:

- **CMIEG Member** means a member of the Coal Mining Industry Employer group who employs Employees.
  - **document** has the meaning given by the *Evidence Act 1995* (Cth).
  - **Employee** means an employee whose employment is covered by the *Black Coal Mining Industry Award 2010*.
4. In respect of the statements of Mr David Gunzburg dated 24 February 2017 and 18 August 2017:
- a. any correspondence between the CMIEG or any member of the CMIEG or the solicitors for the CMIEG and Mr David Gunzburg, including without limitation:
    - i. any letter of instruction to Mr David Gunzburg; and
    - ii. any letter of engagement of Mr David Gunzburg.
  - b. any material relied upon by Mr David Gunzburg in preparing his statement; and
  - c. any draft of the statement of Mr David Gunzburg.
5. In respect of the letter/report of Dr Keith Adam dated 28 February 2017:
- a. any correspondence between the CMIEG or any member of the CMIEG or the solicitors for the CMIEG and Dr Adam; and
  - b. any material relied upon by Dr Adam in preparing his statement; and
  - c. any draft of the letter/report of Dr Adam.
6. In respect of each CMIEG Member:
- a. any document which records or refers to a payment of accident pay to an Employee;  
and
  - b. any employment contract to which the CMIEG Member and an Employee are party and which contains one or more terms dealing with accident pay.