

From: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>
Sent: Thursday, 16 June 2022 5:54 PM
To: 'Noni Lord' <noni.lord@aed.org.au>; Emma Gruschka <Emma.Gruschka@sparke.com.au>
Cc: 'marywalsh6@bigpond.com' <marywalsh6@bigpond.com>; 'Alana.Rafter@ablawyers.com.au' <Alana.Rafter@ablawyers.com.au>; 'ben.redford@unitedworkers.org.au' <ben.redford@unitedworkers.org.au>; Leigh Svendsen <leighs@hsu.net.au>; Kairsty Wilson <kairsty.wilson@aed.org.au>; 'skemppi@actu.org.au' <skemppi@actu.org.au>
Subject: RE: AM2014/286 - Application for a notice to produce

OFFICIAL

Dear Parties,

I have brought your application and draft order to the attention of the Vice President. He directs the Commonwealth to provide any response to the application for the order by 5:00pm Thursday 23 June 2022, should it wish to do so.

Kind regards,
Caroline

Caroline Beasley
Associate to Vice President Hatcher



Fair Work Commission

Australia's national workplace relations tribunal

T (02) 9308 1812

E chambers.hatcher.vp@fwc.gov.au

Level 11, Terrace Tower, 80 William Street, EAST SYDNEY NSW 2011
www.fwc.gov.au

The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

This email was sent from Gadigal Country.

From: Noni Lord <noni.lord@aed.org.au>
Sent: Thursday, 16 June 2022 3:21 PM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>
Cc: 'marywalsh6@bigpond.com' <marywalsh6@bigpond.com>; 'Alana.Rafter@ablawyers.com.au' <Alana.Rafter@ablawyers.com.au>; 'ben.redford@unitedworkers.org.au' <ben.redford@unitedworkers.org.au>; Leigh Svendsen <leighs@hsu.net.au>; Kairsty Wilson <kairsty.wilson@aed.org.au>; 'skemppi@actu.org.au' <skemppi@actu.org.au>
Subject: AM2014/286

Dear Associate

RE: Supported Employment Services Award review (AM2014/286)

We refer to the above matter.

We attach for filing a notice to produce (F52), and draft orders.

Regards

Noni Lord

Legal Co-ordinator

AED LEGAL CENTRE

Level 9, 45 William Street, Melbourne 3000.

Tel: (03) 9639 4333 Fax: (03) 9650 2833 web: www.aed.org.au

Liability limited by a scheme approved under Professional Standards Legislation

 Find us on
Facebook www.facebook.com/aedlegalcentre



AED has adopted both a COVIDsafe Plan as well as a comprehensive COVID-19 policy prepared in accordance with Government and Law Institute Guidelines.

Liability limited by a scheme approved under Professional Standards Legislation

AED acknowledges the traditional custodians of the lands across Australia and particularly the Wurundjeri people of the Kulin Nation, on which AED is situated. We pay deep respect to Elders past and present.

Help AED by making a Tax Deductible donation at: www.aed.org.au

WARNING – a new era of cyber fraud exists!

Accordingly please verify any email received from us requesting a transfer of monies to our bank accounts by calling us on (03) 9639 4333 before transferring the money. We will not use new bank account details supplied by you without calling you first.

"This email is intended solely for the person or organisation to whom it is addressed, and may contain secret, confidential or legally privileged information. If you have received this email in error or are aware that you are not authorised to, you MUST NOT use or copy it, or disclose its contents to any person. If you do any of these things you may be sued or prosecuted."



About the F52 application form

Application for an order for production of documents, records or information to the Commission

About orders for the production of documents etc to the Fair Work Commission

The [Fair Work Act 2009](#) allows the Fair Work Commission (Commission) to inform itself in relation to a matter before it by requiring a person to provide copies of documents or records, or to provide any other information to the Commission. A party can apply for an order requiring a person to produce documents, records or other information to the Commission.

The application must be accompanied by a draft order. The template for the draft order is attached to this form.

A person is only required to produce documents which are in their possession, custody or control; they are not required to create documents to comply with an order.

If the Commission makes the order, you must serve a signed copy of the order upon the person who is required to produce the documents, records or other information and, unless the order has been published on the Commission's website, upon every other party in the matter. For information about orders for production of documents, records or information to the Commission, see the [Practice note for Orders to attend and orders to produce](#) on the Commission's website.

Who can use this form

Use this form if you are a party to a matter currently before the Commission and you want the Commission to make an order for production of documents, records or other information to the Commission.

Lodgment and service of your completed form

1. **Lodge this application and draft order** and any supporting documents with the Commission.

You can lodge your application by post, by fax or by email or in person at the [Commission's office](#) in your state or territory.

2. Unless the Commission orders otherwise, **as soon as practicable** after this form is lodged with the Commission, **serve a copy** of this application on:
 - the person who is required to produce the documents, records or information to the Commission **and**
 - unless the application has been published on the Commission's website, every other party in the matter.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person's lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person's behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person or
- a bargaining representative that is representing the person or
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to

give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Paid agent – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is an Applicant, Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or organisation responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for the purpose of dealing with the application for an order requiring production of documents, information or records to the Commission. The information will be included on the case file, and the Commission 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.



Remove this cover sheet and keep it for future reference – it contains useful information

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



These are the details of the party that is making this application.

If the Applicant is an individual, provide the following details:

Title	[] Mr [] Mrs [] Ms [] Other please specify:		
First name			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

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

Legal name	Association of Employees with a Disability		
ACN (if a company)			
ABN (if applicable)	80 353 375 261		
Trading name or registered business name (if applicable)	AED Legal Centre		
Contact person	Kairstien Wilson		
Postal address	PO Box 319, Collins Street West		
Suburb	Melbourne		
State or territory	Victoria	Postcode	8007
Phone number	(03) 9639 4333	Fax number	(03) 9650 2833
Email address	noni.lord@aed.org.au		

Which party is the Applicant?

- Applicant
- Respondent
- Other

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

The Applicant for this order is: Association of Employees with a Disability (AED).

The Commission matter that this application relates to



These are the details of the main matter that the proposed order relates to.

Matter name	4 yearly review of modern awards – Supported Employment Services Award
Matter number	AM2014/286

1. The Application

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



Using numbered paragraphs, identify the documents, records and information you want produced to the Commission.

1. Documents that show the number of Australian Disability Enterprises (**ADEs**) that use the Supported Wages System (**SWS**).
2. Documents that contain statistical, modelling or other summary information that includes information about the take-up of the SWS by ADEs over such period or periods the Commonwealth has that information.
3. Documents that show the number and name of the ADEs that graded employees at each of the wage levels referred to in table A28 of the Fair Work Commission New Wage Assessment Structure Evaluation Report (the **Evaluation Report**).
4. Documents that, in respect of the wages tools referred to in Table 19 on page 75 of the Evaluation Report, shows:
 - (a) the current wage level (classification and hourly rate after assessment) of each of the sampled employees, by wages tool;
 - (b) the wage outcomes (classification and hourly rate after assessment) of each of the

sampled employees if the FWC preferred wage assessment structure is applied, by wages tool.

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



Using numbered paragraphs, explain why each document, record or piece of information is sought. This might include, for example, explaining the evidence that is contained in a document or how a document is relevant to the main matter.

1. In their decision [2020] FWCFB 1704 the Full Bench stated in [3] that the purpose of the trial that they had foreshadowed in their decision of 3 December 2019 ([2019] FWCFB 8179) was:

“The purpose of the trial is to assist the Commission in determining whether the SES Award should be varied to include the wages structure we indicated we preferred in the principal decision.”
2. The Full Bench repeated this expression of purpose in the statement they published this year following the FWC’s receipt of the Evaluation Report ([2022] FWBFC 6) at [30]. The Bench went on to say in that statement, at [8], that their intention, following receipt of the Evaluation Report, was to:

“[U]ndertake the final step in the process envisaged in the decision of 3 December 2019 decision, namely to receive further evidence and submissions from the parties in light of the trial outcomes recorded in [Evaluation Report] to make a final determination as to the new wages structure to be placed in the SES Award.”
3. The documents sought from the Commonwealth have adjectival relevance to the “final step” referred to by the Full Bench in their statement. The documents pertain to subject matters referred to and reported upon in the Evaluation Report and to reasons the Full Bench has given in their 3 December 2019 decision for proposing the wages structure that the Evaluation Report evaluated. The parties seeking this production order have filed a position paper and a submission that addresses the Full Bench’s reasons. The documents sought are directly relevant to matters the Full Bench has asked to be addressed about and that the requesting parties addressed in their submissions and position paper.
4. The Commonwealth conducted the Evaluation Report. Further, in its submission to the FWC dated 22 April 2022, the Commonwealth stated:
 - (a) That it had overall policy responsibility for employees employed in supported wage settings (at [2(a)]);
 - (b) Had policy responsibility and overall management of the SWS (at [2(b)]);
 - (c) Managed a panel of assessors who completed SWS assessments: (at [2(c)]);
 - (d) Holds data arising from the conduct of these assessments conducted by its panel of assessors (Footnote 1) and provides information about features and characteristics of these assessments in ADE settings in [9].

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



Using numbered paragraphs, explain how each document, record or other piece of information could assist the Commission in deciding the main matter.

1. The documents that have been sought will assist the FWC to decide the matters relevant to its foreshadowed decision in the manner described above in answer to paragraph 1.2 of this form.



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	AED Legal Centre
Date	16 June 2022
Capacity/ Position	Principal Solicitor of AED Legal Centre
	If you are not the Applicant and are completing this form on the Applicant's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

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

4 yearly review of modern awards – Supported Employment Services Award

Commission Matter No: AM2014/286

VICE-PRESIDENT HATCHER

16 JUNE 2022

TO The Proper Officer, Commonwealth of Australia

Commonwealth of Australia, represented by and acting through the Department of Social Services,
c/o Sparke Helmore
Level 40, 600 Bourke Street,
Melbourne VIC 3000

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: 16:00

Date: 23 June 2022

Place: NSW Fair Work Commission Office
Level 11, Terrace Tower, 80 William Street
East Sydney, NSW, 2011

Member

Note: • This order has been issued at the request of the Association of Employees with a Disability (AED).

- 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. Documents that show the number of Australian Disability Enterprises (**ADEs**) that use the Supported Wages System (**SWS**).
2. Documents that contain statistical, modelling or other summary information that includes information about the take-up of the SWS by ADEs over such period or periods the Commonwealth has that information.
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 - (a) the current wage level (classification and hourly rate after assessment) of each of the sampled employees, by wages tool; and
 - (b) the wage outcomes (classification and hourly rate after assessment) of each of the sampled employees if the FWC preferred wage assessment structure is applied, by wages tool.