

**From:** Kyle Scott [mailto:Kyle.Scott@ablawyers.com.au]  
**Sent:** Friday, 1 July 2016 6:31 PM  
**To:** Chambers - Hatcher VP  
**Cc:** AMOD; 'Justin Cooney'; 'Judith Wright'; Margaret Chan  
**Subject:** AM2014/196 & 197 - Part-Time and Casual Employment - Request for Orders for production of documents

Dear Associate

**AM2014/196 & 197 - Part-Time and Casual Employment**

We refer to the above proceedings and the hearings listed for 11-15 July 2016 and confirm we act for Australian Business Industrial and the NSW Business Chamber Ltd.

Please find **attached** five draft *Orders Requiring Production of Documents etc. to the Fair Work Commission (draft Orders)* which our clients respectfully request be made by the Commission.

We set out below a summary of the grounds in support of the making of the Orders:

1. The variation sought by our clients relates to a requirement that employers agree with part-time employees their regular pattern of work including the number of hours worked, days worked and starting and finishing times.
2. In respect of the witness statements of Ms Bady, Ms Gamble and Ms Bookallil, those statements refer to written employment agreements or otherwise contain information about the terms of their employment and the nature of their working hours. Our clients have sought copies of the employment agreements of those witnesses in order to properly understand the nature of their employment arrangements.
3. In respect of the witness statements of Mr Wiengard and Ms Furtado, their statements refer to a survey that was conducted of ASU members, and makes certain assertions about the findings of that survey, although the statements do not attach the actual results of the survey (either in a summary form or in full). Our clients have sought copies of the complete survey results in order to properly understand and interrogate the findings of the survey and to test the generic assertions contained in the witness statements regarding the results.
4. By letter dated 27 June 2016, our office requested the abovementioned documents from the ASU.
5. By letter dated 30 June 2016, the ASU declined to provide any documents on the bases that:
  - a. the documents sought contained confidential information; and
  - b. some of the information contained in certain documents was not relevant to the proceedings.
6. By letter of 30 June 2016, our office advised that it would be willing to enter into appropriate confidentiality undertakings regarding the use of the documents.
7. By letter dated 1 July 2016, the ASU again declined to provide all documents sought, stating that:
  - a. confidentiality undertakings will not provide sufficient protections;
  - b. it was not clear what sanction would apply where the undertakings were breached; and

- c. even where the documents are redacted, the potential for identifying the survey participants would still be significant.

We attach the relevant correspondence between the parties for the Commission's reference.

In light of the above, our clients respectfully request the attached Orders be made compelling the production of documents relevant to the present proceedings.

We thank the Commission for its consideration of this request, and note that we have copied the relevant union representatives into this email.

Please do not hesitate to contact me should you have any further queries.

Yours sincerely

**Kyle Scott**

Senior Associate

Australian Business Lawyers & Advisors

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27 June 2016

**Our Ref:** 20160104

BY EMAIL      jcooney@asu.asn.au

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Mr Justin Cooney  
Industrial Officer  
Australian Services Union - National Office  
116 Queensberry Street  
Carlton South VIC 3053

Dear Mr Cooney

**FOUR YEARLY REVIEW OF MODERN AWARDS: CASUAL AND PART-TIME EMPLOYMENT  
(AM2014/196, AM2014/197)**

We refer to the above proceedings and confirm we act for Australian Business Industrial and the NSW Business Chamber Ltd.

On 29 April 2016, the ASU filed a number of witness statements in these proceedings, including witness statements of Leon Wiegard, Susie Bady, Camille Furtado and Christine Gamble.

**Request for documents**

Our clients request copies of certain documents or materials which are either referred to in those witness statements or are otherwise relevant to the proceedings. This material is necessary to allow our clients to understand the basis upon which these witnesses have made particular assertions in their statements, and to allow us to consider whether these may need to be tested through cross-examination.

The materials requested are set out below:

Paragraph Ref	Document Sought
<b><i>Statement of Leon Wiegard</i></b>	
[8]	The raw data containing the full survey results collected from Survey Monkey, which form the basis of the assertions contained at paragraph [8] of the statement.

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27 June 2016

FOUR YEARLY REVIEW OF MODERN AWARDS: CASUAL AND PART-TIME EMPLOYMENT (AM2014/196,  
AM2014/197)

Paragraph Ref	Document Sought
<b>Statement of Susie Bady</b>	
[10]	A copy of any employment contract governing Ms Bady's employment with SNAP.
<b>Statement of Camille Furtado</b>	
[5]	Copies of the "fifty surveys" referred to in that paragraph, which form the basis of the assertions contained at paragraphs [6]-[13] of the statement.
<b>Statement of Christine Gamble</b>	
[9]	A copy of the "agreement" referred to in that paragraph.

Our clients assume that the production of these materials should be uncontroversial and that there is no objection to providing our clients with the same. We would be grateful if the documents can be provided at your earliest convenience and by no later than close of business on **Friday 1 July 2016**.

If the ASU has any objection to this request, please let us know by no later than close of business on **Wednesday 29 June 2016** so that our clients may seek formal orders for production from the Commission.

In the interests of expediency, we would be amenable to receiving copies of the request documents by email. We look forward to receipt of this material in a timely manner.

If you have any questions, please contact Kyle Scott on (02) 9458 7607.

Yours sincerely



**Kyle Scott**  
**Senior Associate**  
Australian Business Lawyers & Advisors Pty Limited  
(02) 9458 7607  
Kyle.Scott@ablawyers.com.au



30 June 2016

**Our Ref:** 20160104

BY EMAIL      [jcooney@asu.asn.au](mailto:jcooney@asu.asn.au)

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Mr Justin Cooney  
Industrial Officer  
Australian Services Union - National Office  
116 Queensberry Street  
Carlton South VIC 3053

Dear Mr Cooney

**FOUR YEARLY REVIEW OF MODERN AWARDS: CASUAL AND PART-TIME EMPLOYMENT  
(AM2014/196, AM2014/197)**

We refer to the above proceedings and to your letter of today's date.

In your letter, the ASU has declined to provide all documents requested by our client. The bases for the ASU declining to provide the documents sought include:

- concerns around the confidentiality of the documents; and
- an assertion that *some* of the information contained in certain documents is not relevant to the proceedings (although curiously you have not denied that *some of the information* contained in the documents is relevant).

Our clients restate their view that the documents are relevant to the issues in dispute in the proceedings and should be provided. We invite you to reconsider your position and, to this end, make the following comments:

- Our clients are happy to enter into appropriate confidentiality undertakings to address any concerns that you may have regarding confidentiality of certain documents or data. Alternatively, our clients are prepared to accept the survey data in a redacted or de-identified form if that would alleviate your concerns.
- On the question of relevance, the documents sought are clearly relevant to the issues for consideration in the proceedings. The witnesses have explicitly referred to the documents and have made comments about the documents in their statements.
- While it is trite that *some* of the information in the documents might not be relevant to the present proceedings, there will of course be *other* information which is clearly relevant to the proceedings. Our clients are interested in the information which is relevant. The fact that the documents contain information, some of which is not relevant, does not detract from the fact that the documents contain other information which *is* relevant.

30 June 2016

FOUR YEARLY REVIEW OF MODERN AWARDS: CASUAL AND PART-TIME EMPLOYMENT (AM2014/196,  
AM2014/197)

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- With respect, it would be a bizarre outcome if a party could legitimately decline to provide relevant documents on the basis that not *all* of the information contained in the documents is relevant.

**Next steps**

In light of our comments above, we respectfully request that the ASU reconsider its position and indicate a willingness, by close of business on **1 July 2016**, to provide the documents requested.

While we hope this matter can be resolved efficiently, failing a change in the ASU's position our clients will seek orders from the Commission under section 590(2)(c) of the *Fair Work Act*. Our clients will also rely on this chain of correspondence in support of those applications.

As previously advised, in the interests of expediency our clients would be amenable to receiving copies of the requested documents by electronic means.

We look forward to your response.

If you have any questions, please contact Kyle Scott on (02) 9458 7607.

Yours sincerely



**Kyle Scott**

**Senior Associate**

Australian Business Lawyers & Advisors Pty Limited

(02) 9458 7607

Kyle.Scott@ablawyers.com.au



**A•S•U**

File/Our Ref:  
Your Ref:  
Please quote in reply

Kyle Scott  
Senior Associate  
Australian Business Lawyers & Advisors

Thursday, 30 June 2016

By Email: [Kyle.Scott@ablawyers.com.au](mailto:Kyle.Scott@ablawyers.com.au)

Dear Mr Scott,

**RE: M2014/196 & 197 - Part-Time and Casual Employment -  
NDIS and related matters**

The ASU refers to your correspondence of 27 June 2016 and 28 June 2016.

In the correspondence Australian Business Lawyers & Advisors are requesting documents in relation to witness statements filed by:

Leon Wiegard;  
Susie Bady;  
Camille Furtado;  
Christine Gamble; and  
Rosie (Judith) Bookalil

The ASU provides the following response.

Leon Wiegard statement paragraph 8 raw data containing full survey results.

The ASU declines to provide this information as the raw data is confidential due to the ability to identify employees who responded to the survey as ASU members.

Susie Bady statement paragraph 10 copy of any employment contract governing Ms Bady's employment with SNAP.

The ASU declines to provide the employment contract as the employment contract is confidential to Ms Bady and SNAP. Further the employment contract will contain information that is not relevant to the matters in M2014/196 & 197.

Camille Furtado statement paragraph 5 copies of the fifty surveys.

The ASU declines to provide the material sought as the surveys are confidential and provision of the information will allow employees who completed the surveys to be identified as ASU members.

Christine Gamble statement paragraph 9 copy of the agreement.

**Australian  
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Union**

**National Office  
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**Assistant National Secretary**  
Greg McLean

The ASU declines to provide the agreement as the agreement is confidential to Ms Gamble and her employer and the agreement will contain information that is not relevant to the matters in M2014/196 & 197.

Rosie (Judith) Bookallil statement paragraph 5 copy of written agreement.

The ASU declines to provide the written agreement as the agreement is confidential to Ms Bookallil and her employer. Further the agreement is likely to contain information that is not relevant to the matters in M2014/196 & 197.

If you have any further questions please contact Justin Cooney on 03-9342 1446 or by email: [jcooney@asu.asn.au](mailto:jcooney@asu.asn.au)

Yours faithfully,

A handwritten signature in black ink that reads "Justin Cooney". The signature is written in a cursive, flowing style.

Justin Cooney  
Industrial Officer  
Australian Services Union - National Office





**A•S•U**

File/Our Ref:  
Your Ref:  
Please quote in reply

Kyle Scott  
Senior Associate  
Australian Business Lawyers & Advisors

Friday, 1 July 2016

By Email: [Kyle.Scott@ablawyers.com.au](mailto:Kyle.Scott@ablawyers.com.au)

Dear Mr Scott,

**RE: M2014/196 & 197 - Part-Time and Casual Employment -  
NDIS and related matters**

The ASU refers to your correspondence of 30 June 2016.

The ASU notes that ABI as part of its request for documents now proposes:

- The possibility of appropriate confidential undertakings regarding confidentiality of particular documents; or
- The ASU to provide survey data in a redacted or de-identified form.

The ASU does not believe confidential undertakings will provide sufficient protections. From the ASU's viewpoint it is uncertain which organisation/s or person/s the confidentiality undertakings will cover. Further it is unclear what sanction, if any, would apply to an organisation or person who breached the confidentiality undertakings.

In regard to redacting or de-identifying data the ASU believes the potential for ascertaining the participants in the surveys will remain significant.

For these reasons and the reasons outlined in the ASU correspondence of 30 June 2016 the ASU declines to provide the documents sought.

If you have any further questions please contact Justin Cooney on 03-9342 1446 or by email: [jcooney@asu.asn.au](mailto:jcooney@asu.asn.au)

Yours faithfully,

Justin Cooney  
Industrial Officer  
Australian Services Union - National Office

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**Assistant National Secretary**  
Greg McLean

**Form F52      Draft 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.:**      AM2014/196 - Part Time Employment

**Applicant:**                      Australian Business Industrial and New South Wales Business  
Chamber Ltd

**TO:**      Christine Gamble  
C/- Australian Services Union  
116-124 Queensberry St,  
Carlton South VIC 3053

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:      10:00am

Date:      Friday, 8 July 2016

Place:      Fair Work Commission, Level 10, Terrace Tower, 80 William Street,  
East Sydney NSW 2011

Dated:

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Member of the Fair Work Commission

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.
- 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 [member] on [telephone number].

## **SCHEDULE**

1. A copy of the agreement referred to at paragraph [9] of the witness statement of Christine Gamble filed in these proceedings.

**Form F52 Draft 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.:** AM2014/196 - Part Time Employment

**Applicant:** Australian Business Industrial and New South Wales Business Chamber Ltd

**Respondent(s):** Australian Services Union

**TO:** Camille Furtado  
Australian Services Union  
116-124 Queensberry St,  
Carlton South VIC 3053

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: 10:00am

Date: Friday, 8 July 2016

Place: Fair Work Commission, Level 10, Terrace Tower, 80 William Street,  
East Sydney NSW 2011

Dated:

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Member of the Fair Work Commission

Note:

- This order has been issued at the request of Australian Business Industrial and the New South Wales Business Chamber.
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- 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 [*member*] on [*telephone number*].

## **SCHEDULE**

1. A copy of each and all of the “fifty surveys... returned to the Branch” as referred to at paragraph 5 of the witness statement of Camille Furtado dated 11 March 2016.

**Form F52      Draft 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.:**      AM2014/196 - Part Time Employment

**Applicant:**                      Australian Business Industrial and New South Wales Business  
Chamber Ltd

**TO:**      Leon Wiegard  
            Australian Services Union  
            116-124 Queensberry St,  
            Carlton South VIC 3053

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:      10:00am  
Date:      Friday, 8 July 2016  
Place:      Fair Work Commission, Level 10, Terrace Tower, 80 William Street,  
            East Sydney NSW 2011

Dated:

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Member of the Fair Work Commission

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.
- 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 [*member*] on [*telephone number*].

## **SCHEDULE**

1. Any and all documents containing the results of the survey, including the raw data survey results, which is referred to at paragraph 8 of the witness statement of Leon Wiegard dated 29 April 2016.

**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.:**      AM2014/196 - Part Time Employment

**Applicant:**                      Australian Business Industrial and New South Wales Business Chamber Ltd

**TO:**      Rosie (Judith) Bookallil  
            C/- Australian Services Union  
            116-124 Queensberry St,  
            Carlton South VIC 3053

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:      10:00am

Date:      Friday, 8 July 2016

Place:      Fair Work Commission, Level 10, Terrace Tower, 80 William Street,  
            East Sydney NSW 2011

Dated:

---

Member of the Fair Work Commission

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.
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- If you have any queries in relation to this order please contact the associate to [member] on [telephone number].



## **SCHEDULE**

1. A copy of the written agreement referred to in paragraph [5] of the witness statement of Rosie (Judith) Bookallil dated 23 February 2016.

**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.:** AM2014/196 - Part Time Employment

**Applicant:** Australian Business Industrial and New South Wales Business Chamber Ltd

**TO:** Susie Bady  
C/- Australian Services Union  
116-124 Queensberry St,  
Carlton South VIC 3053

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: 10:00am

Date: Friday, 8 July 2016

Place: Fair Work Commission, Level 10, Terrace Tower, 80 William Street,  
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Member of the Fair Work Commission

Note:

- This order has been issued at the request of Australian Business Industrial and the New South Wales Business Chamber Ltd.
- 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 mentioned above.
- If you have any queries in relation to this order please contact the associate to [member] on [telephone number].

## **SCHEDULE**

1. Any document which is or purports to be a letter of offer, contract of employment or agreement that governs Ms Bady's employment with SNAP Gippsland Incorporated.