

From: Michael Robson <mrobson@asu.asn.au>

Sent: Thursday, June 11, 2020 9:28 AM

To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>; Sam Cahill <Sam.Cahill@ablawyers.com.au>

Cc: AMOD <AMOD@fwc.gov.au>; Rachel Liebhaber <rachell@hsu.net.au>; Stephen Bull <Stephen.Bull@unitedworkers.org.au>; Nigel Ward <Nigel.Ward@ablawyers.com.au>; Julian Arndt <Julian.Arndt@ablawyers.com.au>; Dean Tyler <Dean.Tyler@ablawyers.com.au>; peggms24@gmail.com; Ruchi Bhatt <Ruchi.Bhatt@aigroup.com.au>; Brent Ferguson <Brent.Ferguson@aigroup.com.au>; Paula Thomson <Paula.Thomson@afei.org.au>; shue.yin.lo@afei.org.au; Michael Rizzo <mrizzo@asu.asn.au>; AMOD <AMOD@fwc.gov.au>

Subject: RE: AM2020/18 - s 157 SCHADS App

Dear Associate,

We refer to the revised application regarding LINC filed by ABI last night. Order 4 of the Application concerns the personal information of our member, Angela Brown. We oppose that order as presently drafted. Currently, the order requires the production of 'All Documents' recording or relating to Ms Brown's employment, including any applicable enterprise agreement, Ms Brown's contract of employment and Ms Brown's position description. As presently drafted, Order 4 is an unnecessary intrusion into Ms Brown's personal privacy. However, our member would consent to the production of the three specifically listed documents: any applicable EBA, her contract of employment and her position description. We believe this approach balances the Commission's need to inform itself and Ms Brown's privacy.

We attach a revised application with tracked changes.

Best regards,

Michael Robson
National Industrial Officer
Australian Services Union - National Office

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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

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

Legal name	Australian Business Industrial (ABI) & New South Wales Business Chamber (NSWBC)		
ACN (if a company)	N/A		
ABN (if applicable)	ABN 59 687 108 073; ABN 78 638 594 704		
Trading name or registered business name (if applicable)	N/A		
Contact person	Sam Cahill		
Postal address	Level 15, 140 Arthur Street		
Suburb	North Sydney		
State or territory	NSW	Postcode	2060
Phone number	02 9458 7005	Fax number	N/A
Email address	sam.cahill@ablawyer.com.au		

Which party is the Applicant?

- Applicant
 Respondent
 Other

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

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The Commission matter that this application relates to

Matter name	Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010
Matter number	AM2020/18

1. The Application

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

ABI and NSWBC seek the following Documents from the Lithgow Information and Neighbourhood Centre (**LINC**):

1. All Documents recording or evidencing LINC's policies, procedures or practices as at 1 January 2020 that related to any of the following subject-matters:

- a) the control of infectious diseases in the workplace;
- b) the use of personal protective equipment; and
- c) the provision of support or treatment to people who are unwell;
- d) the provision of support or treatment to people who are suspected of having an infectious disease; or
- e) the provision of support or treatment to people who are confirm as having an infectious disease,

provided that:

- a) LINC may redact the names and addresses (and any other identifying information) of any individuals identified in the documents; and
- b) LINC may redact any health information pertaining to any individual that is not relevant to COVID-19.

2. All Documents recording or evidencing LINC's current policies, procedures or practices that relate to any of the following subject-matters:

- a) the control of infectious diseases, including COVID-19;
- b) the use of personal protective equipment;
- c) the provision of support or treatment to people who are unwell;
- d) the provision of support or treatment to people are suspected of having an infectious disease, including COVID-19; and
- e) the provision of support or treatment to people are confirmed as having an infectious disease, including COVID-19,

provided that:

- a) LINC may redact the names and addresses (and any other identifying information) of any individuals identified in the documents; and
- b) LINC may redact any health information pertaining to any individual that is not relevant to COVID-19.

3. All Documents recording or relating to any incidents in which a client of LINC:

- a) contracted COVID-19;
- b) was required to self-isolate because he or she might have contracted COVID-19; or
- c) was tested for COVID-19,

provided that:

- a) LINC may redact the names and addresses (and any other identifying information) of any individuals identified in the documents;
- b) where client names are redacted, LINC will replace the names with pseudonyms, such as

“Client A”, “Client B” etc.; and

c) LINC may redact any health information that is not relevant to COVID-19.

4. All The following Documents recording or relating to the terms and conditions of Angela Brown’s current employment, including:

- a) any applicable enterprise agreement;
- b) any applicable contract of employment; and
- c) any applicable position description,

provided that:

- a) LINC will redact the names and addresses (and any other identifying information) of any individuals identified in the documents; and
- b) LINC will redact any health information pertaining to any individual that is not relevant to COVID-19.

In the above, “Document” means any document including, without limitation, any handwriting, correspondences, letter, facsimile transmissions, emails, printouts of emails, memoranda, notes, records, diaries, files, file notes, receipts, invoices, cheques, cheque butts, accounts, accounting records, letters of instruction, bank account statements, reports, witness statements, statutory declarations, affidavits, submissions, audio tapes, videotapes, analogue or digital sound or video recordings, computer printouts, computer disks and all other documents whatsoever whether stored electronically, optically or otherwise.

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

1. The Australian Municipal, Administrative, Clerical and Services Union, the Health Services, the Union United Workers Union and National Disability Services (the **Unions**) have made an application to vary the Social, Community, Home Care and Disability Services Industry Award 2010.
2. In support of the application, the Unions filed a number of witness statements, including a witness statement by Angela Brown (the **Statement**).
3. In the Statement, the witness gives evidence in relation to:
 - the witness’s employment with the Organisation;
 - the impact of COVID-19 on the operations of the Organisation; and
 - the impact of COVID-19 on the witness’s employment.
4. ABI and NSWBC are opposing the application made by the Unions.
5. ABI and NSWBC seek the documents set out in this Application because the documents will allow ABI and NSWBC to:
 - test the evidence given by the witness;
 - test the assertions made by the Unions in their application and submissions; and
 - obtain evidence that will be relevant to our response to the application (being evidence that we have been unable to obtain from the Organisation on a voluntary basis).

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

1. The documents and information will assist the Commission in determining:
 - the accuracy, relevance and reliability of the evidence set out in the relevant witness statement; and
 - (more broadly) whether the evidence filed by the Unions is “cogent evidence” that the variations sought are necessary to achieve the modern award objectives.
2. The documents and information will assist ABI and NSWBC in preparing their submissions and evidence in reply to the application, which will address the modern award objectives. This in turn will assist the Commission in considering the merits of the application.
3. The documents will assist the Commission to answer some of the questions posed in their Statement of 5 May 2020.

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

Signature	SC
Name	Sam Cahill (Senior Associate - Australian Business Lawyers & Advisors)
Date	9 June 2020
Capacity/ Position	Representative for ABI and NSWBC in AM2020/18

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



DRAFT ORDER

Fair Work Act 2009

s.158—variation of a modern award to achieve the modern awards objective

Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010

(AM2020/18)

VICE PRESIDENT HATCHER

XX JUNE 2020

TO: Lithgow Information and Neighbourhood Centre (**LINC**)

1 Padley Street, Lithgow NSW 2790

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission (via email) 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, 15 June 2020

Place: Fair Work Commission Sydney Registry via email
(sydney@fwc.gov.au)

Member 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.

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. All Documents recording or evidencing LINC's policies, procedures or practices as at 1 January 2020 that related to any of the following subject-matters:
 - a) the control of infectious diseases in the workplace;
 - b) the use of personal protective equipment; and
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people who are suspected of having an infectious disease; or
 - e) the provision of support or treatment to people who are confirm as having an infectious disease,provided that:
 - a) LINC may redact the names and addresses (and any other identifying information) of any individuals identified in the documents; and
 - b) LINC may redact any health information pertaining to any individual that is not relevant to COVID-19.

2. All Documents recording or evidencing LINC's current policies, procedures or practices that relate to any of the following subject-matters:
 - a) the control of infectious diseases, including COVID-19;
 - b) the use of personal protective equipment;
 - c) the provision of support or treatment to people who are unwell;
 - d) the provision of support or treatment to people are suspected of having an infectious disease, including COVID-19; and
 - e) the provision of support or treatment to people are confirmed as having an infectious disease, including COVID-19,provided that:
 - a) LINC may redact the names and addresses (and any other identifying information) of any individuals identified in the documents; and
 - b) LINC may redact any health information pertaining to any individual that is not relevant to COVID-19.

3. All Documents recording or relating to any incidents in which a client of LINC:
 - a) contracted COVID-19;
 - b) was required to self-isolate because he or she might have contracted COVID-19; or
 - c) was tested for COVID-19,provided that:
 - a) LINC may redact the names and addresses (and any other identifying information) of any individuals identified in the documents;
 - b) where client names are redacted, LINC will replace the names with pseudonyms, such as "Client A", "Client B" etc.; and
 - c) LINC may redact any health information that is not relevant to COVID-19.

4. ~~All~~ The following Documents recording or relating to the terms and conditions of Angela Brown's current employment, ~~including~~:
- a) any applicable enterprise agreement;
 - b) any applicable contract of employment; and
 - c) any applicable position description,
- provided that:
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In the above, "Document" means any document including, without limitation, any handwriting, correspondences, letter, facsimile transmissions, emails, printouts of emails, memoranda, notes, records, diaries, files, file notes, receipts, invoices, cheques, cheque butts, accounts, accounting records, letters of instruction, bank account statements, reports, witness statements, statutory declarations, affidavits, submissions, audio tapes, videotapes, analogue or digital sound or video recordings, computer printouts, computer disks and all other documents whatsoever whether stored electronically, optically or otherwise.