

MinterEllison

9 May 2018

PRIVATE & CONFIDENTIAL

BY EMAIL: Chambers.Hatcher.VP@fwc.gov.au

Associate to Vice President Hatcher
Fair Work Commission
Level 10, Terrace Tower
80 William Street
EAST SYDNEY NSW 2011

Dear Associate

C2013/6333: Summons to Department of Education & Training of Victoria

We refer to the above matter and the order for production documents served on our client, the Department of Education & Training Victoria (**Department**).

By exchanges with representatives of the Australian Childcare Alliance—on whose behalf the order was issued—we have foreshadowed objections to that order and an application to have it set aside. In short, we contend that the production order is liable to be set aside on the grounds that compliance with it is oppressive and/or that the documents whose production it seeks to compel are irrelevant to the underlying proceeding.

The parties have, in the time available, held discussions to determine whether these issues might be resolved without the need for a hearing to determine our client's objections. Until yesterday, we were hopeful that that would occur and that the production order could be set aside (or altered) by consent. It is now clear that that won't be possible.

In those circumstances, we respectfully request that the Commission:

- (a) urgently list a hearing of our client's application to have the production order set aside (attached); and
- (b) extend the deadline for compliance with the production order until such time as that application is determined.

Please contact Zoe Gannon if you have any questions.

Yours faithfully
MinterEllison



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Form F1—Application (No Specific Form Provided)

Fair Work Commission Rules 2013, subrule 8(3) and Schedule 1

This is an application to the Fair Work Commission.

The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	2 Treasury Place		
Suburb	East Melbourne		
State or territory	Victoria	Postcode	3002
Phone number	(03) 9637 3922	Fax number	
Email address	killackey.stacey.u@edumail.vic.gov.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	Department of Education and Training,
Trading name of business	
ABN/ACN	
Contact person	Stacey Killackey

How would you prefer us to communicate with you?

Email (you will need to make sure you check your email account regularly)

Post

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, a union or a family member or friend who will speak on behalf of the Applicant. There is no requirement to have a representative.

Yes—Provide representative's details below

No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person	Amanda Watt; Zoe Gannon		
Firm, union or company	MinterEllison		
Postal address	Rialto Towers, 525 Collins Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	(03) 8608 2872	Fax number	(03) 8608 1000
Email address	Amanda.watt@minterellison.com ; zoe.gannon@minterellison.com		

The Respondent



These are the details of the person or business who will be responding to your application to the Commission.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address	info@childcarealliance.org.au ; info@childcaresa.com.au ; admin@childecare NSW.com.au ; info@childcarequeensland.com.au ; qld@childcarealliance.org.au ; info@childcarewa.com.au ; wa@childcarealliance.org.au ; nigel.ward@ablawyers.com.au ; michal.roucek@ablawyers.com .		

If the respondent is a company or organisation please also provide the following details

Legal name of business	Australian Childcare Alliance Incorporated
Trading name of business	
ABN/ACN	
Contact person	

1. The Application

1.1 Please set out the provision(s) of the Fair Work Act 2009 (or any other relevant legislation) under which you are making this application.

s.590
s.603

2. Order or relief sought

2.1 Please set out the order or relief sought.



Using numbered paragraphs, set out what you are asking the Commission to do.

1. The production order made under s.590(2)(c) on 4 April 2018 directed at Department of Education and Training Victoria be set aside in whole or, alternatively, in part.

2.2 Please set out grounds for the order or relief sought.



Using numbered paragraphs, set out the grounds, including particulars, on which you are seeking the relief set out in question 2.1.

1. The orders made at the Australian Childcare Alliance's request:
 - a. require the production of documents that are not relevant or potentially relevant to any issue in the proceedings;
 - b. are so broad, and require production of such voluminous documents from a non-party to the proceeding, as to be oppressive;
 - c. constitute an impermissible "fishing" expedition and should be set aside as an abuse of process.

3. The employer

3.1 What is the industry of the employer?

Education.

4. Industrial instrument(s)

4.1 Please set out any modern award, agreement or other industrial instrument relevant to the application and their ID/Code number(s) if known.

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	Amanda Watt, Partner, MinterEllison
Date	9 May 2018



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 **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS