

**From:** Robert Seals [<mailto:robert@ieu.asn.au>]

**Sent:** Monday, 16 April 2018 12:04 PM

**To:** Chambers - Hatcher VP

**Cc:** [info@childcarealliance.org.au](mailto:info@childcarealliance.org.au); [info@childcaresa.com.au](mailto:info@childcaresa.com.au); [admin@childcarensww.com.au](mailto:admin@childcarensww.com.au); [info@childcarequeensland.com.au](mailto:info@childcarequeensland.com.au); [qld@childcarealliance.org.au](mailto:qld@childcarealliance.org.au); [info@childcarewa.com.au](mailto:info@childcarewa.com.au); [wa@childcarealliance.org.au](mailto:wa@childcarealliance.org.au); [nigel.ward@ablawyers.com.au](mailto:nigel.ward@ablawyers.com.au); [michal.roucek@ablawyers.com.au](mailto:michal.roucek@ablawyers.com.au);

Michael Wright

**Subject:** C2013/6333 - Application to set aside Orders Requiring Production of Documents

**Associate to Vice President Hatcher**

Dear Associate,

The IEU seeks to file an application that production orders made pursuant to s590(2)(c) on 4 April 2018 be set aside in whole or alternatively in part. Please find attached a relevant Form F1 Application, and a soft copy of Annexure A to the application.

The IEU kindly requests that this application is heard this week if possible, as production under the orders is set for 25 April 2018.

Yours sincerely,

**Robert Seals | Industrial Officer**



Independent  
Education Union  
of Australia  
NSW/ACT Branch



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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.

<b>Title</b>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>			
<b>Surname</b>			
<b>Postal address</b>	GPO Box 116		
<b>Suburb</b>	Sydney		
<b>State or territory</b>	NSW	<b>Postcode</b>	2000
<b>Phone number</b>	(02) 8202 8900	<b>Fax number</b>	(02) 9211 1455
<b>Email address</b>	<a href="mailto:robert@ieu.asn.au">robert@ieu.asn.au</a> ; <a href="mailto:michael@ieu.asn.au">michael@ieu.asn.au</a>		

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

<b>Legal name of business</b>	Independent Education Union of Australia
<b>Trading name of business</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	Robert Seals/Michael Wright

### 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**

**Firm, union or company**

**Postal address**

**Suburb**

**State or territory**

**Postcode**

**Phone number**

**Fax number**

**Email address**

## The Respondent



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

**Title**

Mr  Mrs  Ms  Other please specify:

**First name(s)**

**Surname**

**Postal address**

**Suburb**

**State or territory**

**Postcode**

**Phone number**

**Fax number**

**Email address**

[info@childcarealliance.org.au](mailto:info@childcarealliance.org.au);

[info@childcaresa.com.au](mailto:info@childcaresa.com.au);

[admin@childcare NSW.com.au](mailto:admin@childcare NSW.com.au);

[info@childcarequeensland.com.au](mailto:info@childcarequeensland.com.au);

[qld@childcarealliance.org.au](mailto:qld@childcarealliance.org.au);

[info@childcarewa.com.au](mailto:info@childcarewa.com.au)

[wa@childcarealliance.org.au](mailto:wa@childcarealliance.org.au);

[nigel.ward@ablawyers.com.au](mailto:nigel.ward@ablawyers.com.au);

[michal.roucek@ablawyers.com.au](mailto:michal.roucek@ablawyers.com.au);

**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 orders made under s.590(2)(c) on 4 April 2018 directed at:
  - a. Catholic Education Office,
  - b. Department of Education and Training Victoria,
  - c. Langdale Consultants,
  - d. Mornington Peninsula Shire Council
  - e. Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn, and
  - f. York Civil Pty Ltd,and each of them, be set aside in whole or, alternatively, in part.
2. In the alternative, that any documents produced in accordance with the above orders be subject to confidentiality orders in the form at Annexure A to this application.

## 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. are so broad, and require production of such voluminous documents from non-parties to the proceedings, as to be oppressive,
  - b. are not directed at any relevant or potentially relevant issue in the proceedings,
  - c. constitute an impermissible fishing expedition rather than a legitimate forensic enquiry, and thus should be set aside as an abuse of process.
  
2. Alternatively, if the orders are not set aside, the confidentiality orders at Annexure A should be made as:
  - a. the information sought contains personal information of particular employees, and potentially commercially sensitive information of the respondent employers,
  - b. the proposed confidentiality orders do not cause prejudice to any party, and
  - c. it is not in the public interest, and there is no other reason, for the information contained within to be generally disclosed.

## 3. The employer

### 3.1 What is the industry of the employer?

Early childhood education and civil engineering.

## 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**

*Gloria Taylor*

**Name**

GLORIA TAYLOR (DEPUTY SECRETARY)

**Date**

16-4-18



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**

# ANNEXURE A



FairWork  
Commission

## DRAFT ORDER

*Fair Work Act 2009*

s.594 – Confidential evidence

### **Independent Education Union of Australia**

v

**Commonwealth of Australia as represented by the Department of Education, Employment and Workplace Relations; Australian Chamber of Commerce and Industry; Australian Childcare Centres Association; Australian Community Children's Services; Australian Community Services Employers Association, Union of Employers; Australian Federation of Employers and Industries; Association of Independent Schools of South Australia; The Association of Independent Schools of Tasmania Incorporated; Association of Independent Schools of Western Australia (Inc); Association of Quality Child Care Centres of NSW Inc; Australian Childcare Alliance Victoria; Childcare Queensland Inc; Childcare South Australia; Child Care Association of Western Australia; Community Connections Solutions Australia; Australian Municipal, Administrative, Clerical and Services Union-New South Wales and ACT (Services) Branch; NSW Business Chamber Limited; The Association of Independent Schools of New South Wales Limited T/A AISNSW; Catholic Commission for Employment Relations**

Commission matter no: C2013/6333

VICE PRESIDENT HATCHER

SYDNEY, [DATE] 2018

Pursuant to s.594 of the *Fair Work Act 2009* (the Act) the Fair Work Commission orders that:

[1] The following orders are made in respect of any documents, and any information contained therein, produced in response to the orders requiring production of documents by:

- a) Catholic Education Office,
- b) Department of Education and Training Victoria,
- c) Langdale Consultants,
- d) Mornington Peninsula Shire Council,
- e) Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn,
- f) York Civil Pty Ltd,

and each of them (**the Confidential Information**).

[2] Access to the Confidential Information is restricted to the legal representatives of the parties to the proceedings.

[3] The Confidential Information is to be kept confidential by the parties and the Commission and not disclosed or published, subject to and until further order of the Commission.

- [4] Documents containing or referring to the Confidential Information filed by any party are to be marked as such, and treated (to the extent necessary) as confidential by the parties and the Commission, subject to and until further order of the Commission.
- [5] The parties have liberty to apply to vary these orders on three (3) days notice.