



DECISION

Fair Work Act 2009

s.590 – Powers of the FWC to inform itself

Aged Care Award 2010

(AM2020/99)

Nurses Award 2020

(AM2021/63)

Social, Community, Home Care and Disability Services Industry Award 2010

(AM2021/65)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT ABSURY
COMMISSIONER O'NEILL

MELBOURNE, 19 MAY 2020

Applications to vary modern awards – work value – Aged Care Award 2010 – Nurses Award 2020 – Social, Community, Home Care and Disability Services Industry Award 2010 – application by Mr Grabovsky – s.590(2)(b) – application dismissed

[1] On 8 May 2022, in what he describes as the role of *amicus curiae*, Mr Grabovsky made an application in the Aged Care Work Value Case asking the Fair Work Commission (the Commission) to make a direction under s.590(2)(b)¹ of the *Fair Work Act 2009* (the Act) for:

- him to submit an ‘*amicus brief*’ by 2 August 2022,
- the applicants in matters AM2020/99, AM2021/63 and AM2021/65 to distribute copies of the ‘*amicus brief*’ among ‘Aged Care Workers, Members and non-Members of the corresponding unions’ within 30 days, and
- the Commonwealth to distribute the ‘*amicus brief*’ among ‘government structures responsible for the Health and Aged Care’ by 30 August 2022.

[2] The Commission has broad discretion to inform itself about matters before it as it considers appropriate.² It is not obliged to accept submissions from non-parties.

¹ We understand that where Mr Grabovsky refers in his application to s.509(2)(b) of the Act, he means s.590(2)(b).

² Act, s.590.

[3] In *Levy v Victoria*,³ Brennan J observed that the hearing of an *amicus curiae* is entirely in the court's discretion, and an *amicus* will be heard 'when the court is of the opinion that it will be significantly assisted thereby, provided that any cost to the parties or any delay consequent on agreeing to hear the *amicus* is not disproportionate to the assistance that is expected'.⁴ While the Commission is not a court, these observations are also apt in Commission proceedings.

[4] In the Aged Care Work Value case, the Commission is considering whether to vary wage rates for aged care employees in three awards. The case is not a wide-ranging examination of working conditions in the aged care sector or the conduct of employers or unions in the sector. Having considered Mr Grabovsky's application including a summary of his '*amicus brief*', we have determined that the brief would be unlikely to be of any assistance and accepting it would unnecessarily delay proceedings. Accordingly, Mr Grabovsky's application is dismissed.

PRESIDENT

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³ (1997) 146 ALR 248

⁴ *Ibid* at 260.