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Cc: Alex Grayson <AGrayson@mauriceblackburn.com.au>; Elsie Jordan <EJordan@mauriceblackburn.com.au>; Natasha Prasad <NPrasad@mauriceblackburn.com.au>; AMOD <AMOD@fwc.gov.au>
Subject: AM2020/99 - Work Value Case - Aged Care Award [MBC-VIC.FID5239939]

Dear Associate

We refer to the above matter.

Please find the following documents **attached** by way of filing:

1. An outline of evidence, prepared in accordance with orders 1 and 2 of the 24 November directions issued in this matter; and
2. Proposed draft directions.

Please confirm that these documents will be served on other parties via publication on the Major Cases webpage, or whether you require us to serve these documents on the other parties.

We note we have circulated the draft orders to those parties who appeared at the mention on 24 November 2020.

Kind regards

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IN THE FAIR WORK COMMISSION

AM2020/99

Fair Work Act 2009

s.158—Application to vary or revoke a modern award

Aged Care Award 2010

**OUTLINE OF EVIDENCE TO BE CALLED BY
THE HEALTH SERVICES UNION, MS VIRGINIA ELLIS, MR
MARK CASTIEAU, MS SANU GHIMIRE AND MR PAUL JONES**

14 DECEMBER 2020

Lodged by: Maurice Blackburn Lawyers on behalf of the HSU, Ms Virginia Ellis,
Mr Mark Castieau, Ms Sanu Ghimire, and Mr Paul Jones

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Evidence to be called by the HSU, Ms Virginia Ellis, Mr Mark Castieau, Ms Sanu Ghimire, and Mr Paul Jones (the Applicants)

1. In accordance with the directions made on 24 November 2020, the Applicants advise that they intend to rely on the evidence detailed in this document at hearing of this matter.

The Health Services Union

Employees in the Aged Care Industry

2. The Applicants intend to file between 40 to 60 witness statements from employees covered by the Aged Care Award, across classifications and across Australia (with the exception of South Australia and the Northern Territory).
3. It is anticipated that the evidence included in these statements will describe:
 - a. the nature of the Aged Care industry;
 - b. theories followed and models of care adopted in the Aged Care industry;
 - c. the demographic composition of residents and caring needs of residents (and families of residents) in an Aged Care environment;
 - d. the link between quality employment conditions and quality standards of care;
 - e. the nature of work and duties in the Aged Care industry;
 - f. the employment conditions in the Aged Care industry;
 - g. the skills required to perform work in differing roles in the Aged Care industry;
 - h. the responsibility involved in performing work in the Aged Care industry;
 - i. the challenges faced by employees working in the Aged Care industry, in performing their duties;
 - j. the nature of career progression in the Aged Care industry;
 - k. the changes in the nature of work, responsibilities and skills required in the Aged Care industry over time;
 - l. the undervaluation of the work performed in the Aged Care industry;

- m. the reasons for the undervaluation of the work performed in the Aged Care industry;
- n. the need for recognition of the nature of work and skills required in the Aged Care industry;
- o. the need for an enhanced career path for personal care workers in the Aged Care industry;
- p. training, qualifications and supervision required of employees in the Aged Care industry;
- q. technology, procedures and policies adopted in the Aged Care industry;
- r. the conditions under which work is performed in the Aged Care industry;
- s. the impact of COVID – 19 on the Aged Care industry and work performed and skills required in the industry; and/or
- t. accreditation and the regulation of the Aged Care industry;
- u. the unfairness of wages set by the Aged Care Award; and
- v. the importance of social inclusion through workforce participation.

Residents and Families of Residents

- 4. The Applicants intend to file between 3 to 6 witness statements from residents of Aged Care facilities and their families.
- 5. It is anticipated that these statements will contain evidence which describes:
 - a. The nature of the work performed by employees covered by the Aged Care Award;
 - b. The importance of the work performed by employees covered by the Aged Care Award to the quality of life of residents;
 - c. The value of the work performed by employees covered by the Aged Care Award; and
 - d. The conditions under which work is performed for employees covered by the Aged Care Award.

HSU Officials

6. The Applicants intend to file between 3 to 6 witness statements from HSU officials and employees.
7. It is anticipated that these statements will cover:
 - a. the importance of this claim to the Union and its membership;
 - b. the need for the value of the work of employees in the Aged Care industry to be properly reflected in the Award.
 - c. why enterprise bargaining has failed to deliver a fair wage for aged care workers.
 - d. the findings and observations of the Royal Commission into Aged Care Quality and Safety;
 - e. the nature of the Aged Care industry;
 - f. the employment conditions in the Aged Care industry; the changes in the nature of work and skills required in the Aged Care industry over time;
 - g. the need for recognition of the nature of work and skills required in the Aged Care industry;
 - h. the need for an enhanced career path for personal care workers in the Aged Care industry;
 - i. the industrial history and history of wage fixation of the Aged Care industry;
 - j. the major trends and recent developments in the industry (including in bargaining) and how it impacts on the employees the Union represents;
 - k. the undervaluation of the work performed in the Aged Care industry;
 - l. the nature collective bargaining in the Aged Care industry;
the importance of social inclusion through workforce participation;
 - m. the need to increase the attraction and retention of employees in the Aged care sector;
 - n. productivity, employment costs and the regulatory burden;
 - o. the need to ensure a simple, sustainable easy to understand modern award system; and
 - p. benefits of the application to the national economy.

Site Visits

8. The Applicants will propose site visits to evidence:
 - a. The conditions under which work is performed for employees covered by the Aged Care Award;
 - b. the nature of work and duties in the Aged Care industry;
 - c. the skills required to perform work in differing roles in the Aged Care industry; and
 - d. the responsibility involved in performing work in the Aged Care industry.

Expert Evidence

9. In accordance with the directions, a short outline of the nature of the evidence of each of the experts is set out below. The reports prepared by the experts to be called by the Applicants are not yet complete and so the outline below is necessarily subject to the provision of those reports.
10. The HSU intends to call the following expert witnesses:
 - a. Professor Kathleen Eagar, University of Wollongong;
 - b. Professor Sara Charlesworth, RMIT;
 - c. Professor Gabrielle Meagher, the University of Sydney; and
 - d. Professor Susan Kurrle, the University of Sydney.

Professor Kathleen Eagar, University of Wollongong

11. Professor Eagar will give expert evidence in relation to (without limitation) the changes in the health care needs of residents living in residential aged care and the resulting changes in the skills of workers covered by the Aged Care Award.

Distinguished Professor Sara Charlesworth, RMIT

12. Professor Sara Charlesworth will give expert evidence in relation to (without limitation) the history of personal care work in residential settings in Australia, the

gendered undervaluation of work performed by personal carer workers and the changes in the types of skill used and required by personal care workers in residential aged care.

Professor Gabrielle Meagher, the University of Sydney

13. Professor Meagher will give expert evidence on (without limitation) the changes in the nature of work and skills required in the Aged Care industry, as the result of increasing frailty in the resident population and shifting norms of care towards more individualised, less institutionalised models. She will also give evidence on the gender-based undervaluation of the industry, which has a female dominated workforce undertaking care work.

Professor Susan Kurrle, the University of Sydney.

14. Professor Susan Kurrle will give expert evidence on (without limitation) the changes in the nature of work and skills required in the Aged Care industry, the changes in quality standards and metrics, and the changes in technology and information systems in aged care.

Australian Nurses and Midwives Federation (ANMF)

15. The ANMF will bring evidence from:
 - a. approximately 6 to 10 members covered by the Aged Care Award primarily from Queensland and Victoria. It is anticipated the statements will cover the matters outlined at paragraph 3 above.
 - b. 2 to 5 members covered by the Nurses Award 2010;
 - c. 3 to 6 union officials (**ANMF's Union Official Evidence**).

(together, **the ANMF's Evidence**)

16. The ANMF's Union Official Evidence is likely to cover:
 - a. the ANMF's membership working in aged care, including the demographics and characteristics of those workers;

- b. the relevant award coverage and industrial history;
- c. the job titles of workers affected by the application;
- d. the history of award making and any previous work value assessments conducted;
- e. the extent of enterprise agreements in the sector;
- f. comparative wage data, between the Award, enterprise agreements in private sector aged care and public sector wages and conditions;
- g. relevant survey data and research conducted by or on behalf of the ANMF, including in relation to workload and challenges of working in the aged care sector;
- h. observation about how the nature of work and level of skill and responsibility has changed in the aged care sector over time;
- i. changes to models of care and the environment in which care is delivered;
- j. the increased complexity of needs and acuity of older people in residential aged care;
- k. the diversity of older people accessing aged care services;
- l. the difficulties of bargaining in the sector, including the high levels of casual and part-time employment, low hours contracts, female dominated industry, structure of workplaces and rostering, impact of insecure work;
- m. the effects of COVID-19 on bargaining;
- n. the long-term changes to how work is performed as a result of COVID-19;
- o. qualifications and training required to work in aged care, changes to content of training and changes to expected qualifications and training to work in the sector;
- p. the evidence provided by the ANMF to the Royal Commission into Aged Care Quality and Safety;
- q. the findings and recommendations of the Royal Commission;
- r. how Government funding has failed to flow to wages and the lack of transparency and accountability;
- s. regulation of the sector;
- t. the impact of gender on work value assessment;
- u. the connection between providing decent wages and conditions and the delivery of quality and safe care;
- v. the importance of this claim to the ANMF and its membership;

- w. the need for the value of the work of employees in the aged care sector to be properly reflected in the Award;
- x. the need for an enhanced career path for personal care workers in the aged care sector;
- y. the undervaluation of the work performed in the aged care sector;
- z. the importance of social inclusion through workforce participation;
- aa. the need to increase the attraction and retention of employees in the aged care sector;
- bb. productivity, employment costs and the regulatory burden;
- cc. the need to ensure a simple, sustainable easy to understand modern award system; and
- dd. benefits of the application to the national economy.

United Workers' Union (UWU)

17. The UWU intends to bring evidence from 2 to 3 employees (per state) covered by the Aged Care Award from South Australia, Queensland and Western Australia. They will also bring evidence from 1 to 2 witnesses in the Northern Territory. The evidence provided by these witnesses is expected to cover the topics detailed at paragraph 3 of this outline.
18. The UWU also intends to bring evidence from 2 to 3 union officials which will cover the topics outlined in paragraphs 6 to 7 of this outline.

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DRAFT ORDERS

The Applicants propose the following draft orders:

1. The Applicants and other union parties to file evidence and submissions by 1 April 2021;
2. Employers and Employer Associations to file evidence and submissions by 1 July 2021; and
3. The Applicants and other union parties to file evidence and submissions in reply by 1 September 2021.