

APPLICATION

1. I, Igor Grabovsky, of [REDACTED] am making this application (“**the Application**”) to Fair Work Commission (“**the FWC**”) in capacity of the *Amicus curiae*.

2. I am requesting the FWC, constituted for matters AM2020/99, AM2021/63 and AM2021/65 (jointly “**the Matters**”) by the Full Bench comprised of President [of the FWC] Ross, Deputy President Asbury and Commissioner O’Neill, to issue a direction* inviting Igor Grabovsky to make a submission under sec. 509 (2)(b) of the *Fair Work Act 2009* in a form of the *amicus brief*.

* The draft of the Direction is attached to the Application as **Attachment 2**.

3. I am not a party to proceedings and I am not acting for any person (whether legal or natural) in the Matters. Information in my possession raises the questions of:

- (i) legitimacy of the conduct of and methods used by the parties in the Matters in pursuance of the goals stipulated in their applications to Fair Work Commission;
- and
- (ii) fitness of Fair Work Commission as constituted for AM2020/99, AM2021/63 and AM2021/65 to deal with the Matters.

4. The production of the *amicus brief* will expose and stop misappropriation of the law and misconduct of the key persons (legal and natural) involved in the Matters.

The Production of the *amicus brief* will establish **public control** over the legal process that has paramount importance for the whole Nation and will compel all participants (the FWC inclusive) to act in full compliance with the **Rule of Law*** and in **public interest**.

* IMPORTANT: The *Rule of Law* must not be confused with or substituted by the *rule of lawyers* – these ‘rules’ have two different legal gists, often self-excluding.

5. The essence of the *amicus brief* is elucidated in the *Summary of the amicus brief* attached to the Application as the **Attachment 1**.

Attachment 1 is executed in the form of a Statutory Declaration, so it could be used as evidence in a[n] tribunal of a suitable jurisdiction should the Matters escalate.

6. There are two principals upon which the *amicus brief* is based, namely:

- (i) the superiority of statute law (Acts of the Parliament);
- and
- (ii) the prevalence of objectively recognisable/verifiable evidences.

Both principles are the *fundamental postulates* of the jurisprudence and they are the *pillars* of the Rule of Law.

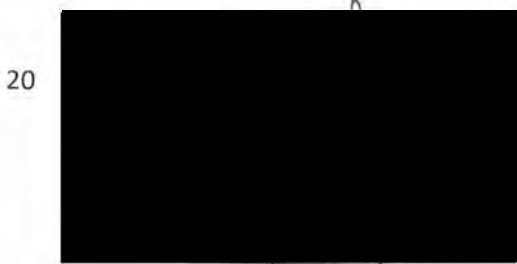
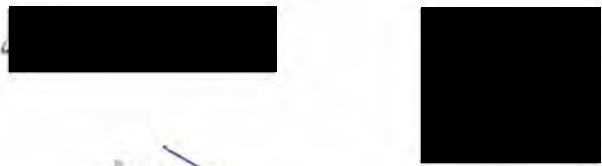
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7. The principle of *superiority of statute* precludes the use of judicial discretion (be it an opinion or authority) which in any manner, form or shape render ineffective provisions of the Acts of the Parliament. The Parliament is the proper place for creating laws, not the courts. Courts must follow the laws created through democratic mechanism and impose obedience of the laws upon others.

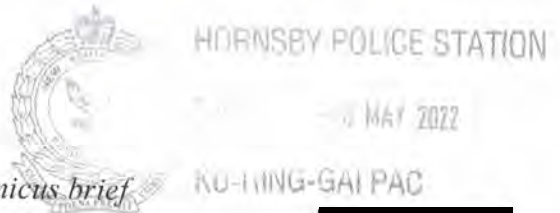
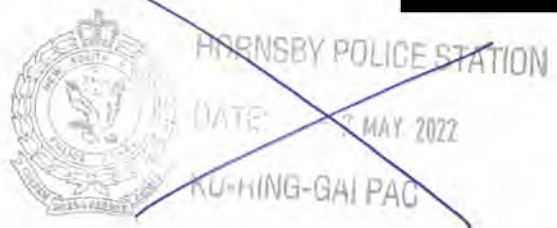
8. The principle of *prevalence of objectively recognisable/verifiable evidence* precludes subjective influence of any person that in any manner, form or shape contradict, distort or render ineffective facts or evidence that are *objectively recognisable/verifiable*.

9. Both principles form the basis for the establishing of *prima facie* cases in each and every jurisdiction in Australia. If these principles are neglected, such conduct will pervert the course of justice and destroy the judicial process based on the Rule of Law and principles of democratic governance.

Dated this 08th day of May, 2022.



Igor Grabovsky,
Amicus curiae
Proud Australian Citizen



- Encl:
1. Attachment 1 – Summary of the *amicus brief*
 2. Attachment 2 – Draft of the Directions



IT MUST BE NOTED: All three documents constitute one and the same document and the enumeration is continuous throughout all three documents.

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STATUTORY DECLARATION

I, Igor Grabovsky of [redacted] acting in a role of the *Amicus curiae*, declare that all information provided in Attachment 1 – the Summary of the *amicus brief* – is true to the best of my knowledge.

10 I do support changes in the Aged Care sector, which are suppose to improve the position of the Aged Care Workers, but I have taken upon myself the role of the *Amicus curiae* because I am in possession of information that some participants and the parties to proceedings in matters AM2020/99, AM2021/63 and AM2021/65 do not act in the best interest of the Aged Care Workers due to conflict of interest.

Also, evidences in my possession raise *substantiated distrust* in the fitness of the Full Bench of Fair Work Commission, as it is currently comprised, to deal with any matter before them due to their (members' of the Full Bench) incompetence, corrupt conduct and judicial misconduct that have bearing on the issues raised in matters AM2020/99, AM2021/63 and AM2021/65.

20 This information is either unknown to the general public and the interested parties or is deliberately hidden, preventing the Australian public and the Aged Care Workers from learning the truth and making fully informed decisions.

Signed by Igor Grabovsky

[redacted signature]

STAMP



HORNSBY POLICE STATION

DATE: 0 MAY 2022

KU-RING-GAI PAC

30 Signature of deponent

at Hornsby Police Station

in NSW on 08th day of May 2022

Before me: Constable Marcus Cavallaro-Laverty
Name and qualification of witness

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[redacted signature]
Signature of witness

From the desk of Igor Grabovsky

ATTACHMENT 1

SUMMARY OF THE AMICUS BRIEF

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LEGAL DISCLAIMER:

I do have expert knowledge in conducting complex investigations that range from an investigation of the sophisticated scams up to an investigation of the corrupted judiciary and officials.

As a result of my involvement in the Dispute (see Part I below) for the period of nine years, I do have knowledge about the *residential aspect of the aged care*, which is complemented with my understanding of the juristic, procedural and judicial norms to the extent sufficient to assume the role of a *private prosecutor* of the offender of any calibre.

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In all other areas of the aged care (e.g. home care) the level of my expertise is either absent or on the level of general knowledge, therefore, I refrain from making any statements or analyses which are either in the areas outside my expertise or are not supported with the objectively verifiable evidences.

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PART I *Premises for Application - background information (salient facts)*

1.1 On the 27 August 2013, Inna Mrs. Grabovsky, Care Service Employee (“**the Injured Worker**”) collapsed in her workplace and was taken by ambulance to Hornsby Hospital, where she remained as in-patient.

1.2 The employer of the Injured Worker, **United Protestant Association NSW Limited**, is an aged care service provider, ID 0557 (“**the UPA**”).

1.3 The UPA has imposed a severe workload upon the Injured Worker and forced her, firstly by *deception* and then by *coercion*, to perform duties/tasks for which she has no prescribed qualification.

1.4 the Injured Worker was diagnosed and treated by no less than five medical practitioners and she was on a continuous WorkCover Certificate with no ability to work since the date of her injury.

1.5 The irrefutable evidences of her injury had forced the UPA’s insurer (EML) to accept liability for the injury (after five months of dispute).

1.6 The Injured Worker has asked the UPA to compensate her for the *unpaid and underpaid* work she *had already performed* and never direct her again to *perform task for which she has no prescribed qualification* (to administer medicine to the residents of the aged care facility, the task, which she has been forced to perform for the entire period of her employment). In response to the Injured Worker’s lawful request, the UPA has begun a campaign of bullying and intimidation.

1.7 On the 05 March 2014, the Injured Worker applied to the FWC to arbitrate the Dispute pursuant to sec. 739 of the *Fair Work Act 2009* originating matter **C2014/3313**.

1.8 As retaliation for filing a complaint and for originating a proceeding in the jurisdiction of the FWC, the UPA was relentlessly applying undue pressure on the already injured Worker and her family in an attempt to force the Injured Worker to abandon her claims. The UPA, in conspiracy with the insurers (the EML and HESTA), had unlawfully stopped payments of the WorkCover weekly (fortnightly) compensation and refused to pay the income protection compensation, depriving her of medicine, food and an adequate standard of living.

1.9 As a result of the UPA’s intentionally harmful conduct, the Injured Worker’s health condition deteriorated and became permanent. In 2016 Inna was assessed by a Government approved medical specialist as having 26% of WPI (Whole Person Impairment). Later that year, Inna was independently examined by the Department of Human Services and assessed as having a disability. Since 2016, Inna is a recipient of the disability support pension.

1.10 A trivial workplace dispute (“**the Dispute**”) between Mrs. Grabovsky and the UPA, which begun back in 2013, gave rise to the events that directly relate to the Matters, which are currently before the FWC. From the beginning of the Dispute until the present time I am representing Inna Mrs. Grabovsky. The Dispute is not resolved, but has escalated.

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PART II *Premises for Application – role of the peak bodies in exploitation and defrauding the aged care workers by their employers*

2.1 One of the regulatory documents essential for the establishment of the legally correct workplace relations is the Enterprise Agreement (“**the EA**”). Many EAs in the aged care sector contain unlawful terms, which allow the *aged care service providers* (employers) to exploit the aged care workers to a degree that constitutes *modern slavery*.

10 2.2 Almost every EA, which contains the unlawful terms, is based on the *template agreement* designed and promoted by Aged & Community Services Australia* (“**the ACSA**”).

IT MUST BE NOTED: There is another peak body, named Leading Age Services Australia (“**the LASA**”) that has a similar *template agreement* containing the unlawful terms, but I did not deal with that organisation and hence, I cannot speak intelligently about its conduct.

20 2.3 My direct examination of the ACSA’s members, including senior management*, during a number of proceedings in the FWC’s jurisdiction had exposed the fact that the ACSA is instrumental for facilitation of **widespread theft of the workers’ earnings** by the unscrupulous aged care service providers (mainly by the **large institutional employers**).

* e.g. **Ms. Wade** – National Manager at ACSA, who is listed as the Employer lay witness in the Matters

2.4 The ACSA’s [mis]conduct is also instrumental for **massive misappropriation of the Commonwealth subsidies by the aged care service providers**.

30 2.5 **The ACSA’s activities are resulting in numerous suspicious deaths of the aged care recipients** because the services are being provided by unqualified aged care workers on the direction of the employers, who act on the advice given by the ACSA.

2.6 **The amicus brief is crucial:**

- 40
- (i) for the exposure of methods used by the peak bodies for creating a legal environment that allows defrauding of the aged care workers by the employers with perfect impunity;
 - (ii) for the exposure of systematic agreements between the peak bodies and the Unions that result in the exploitation of the aged care workers by the employers to a degree that constitutes *modern slavery*;
 - (iii) for the exposure of methods used by the employers, as a result of the agreements between the Unions and peak bodies, which deprave the aged care workers of a chance to get justice in the jurisdiction of the FWC;
 - (iv) for the exposure of the direct link between the unlawful terms of the EA agreements approved by the Unions, peak bodies and the FWC and exploitation and theft of the earnings of the aged care workers by the employers.

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PART III *Premises for Application – role of the Unions in exploitation and defrauding the aged care workers by their employers*

3.1 The EAs must be approved/agreed by the corresponding Union(s) before they (EAs) come to the FWC for a final approval.

3.2 The **Australian Nursing and Midwifery Federation** and the **Health Services Union** are the Unions that approve the terms of the EAs in the aged care sector on behalf of their members prior to the EAs being lodged with the FWC for a final approval.

3.3 The Australian Nursing and Midwifery Federation and the Health Services Union are the **Applicants in the Matters**.

3.4 Back in 2016-17, I was acting as the Bargain Representative for the Injured Worker, protesting the unlawful terms of the UPA EA that allow the employer (UPA) to exploit and defraud the aged care workers with perfect impunity.

3.5 Both Applicants in the Matters [the HSU and ANMF] were involved in the Dispute and **they had sided with the employer** (UPA), **neglecting** their [the Unions'] functions in defending the rights of the [aged care] workers*, **supporting the exploitation of the workers and theft of the workers' earnings by the employers**.

* While the Injured Worker is not a member of any Union, the EAs are affecting all Union members

3.6 Also, the Unions were supportive of the *outrageous misbehaviour* of the FWC constituted by **Commissioner Johns**, who acted corruptly, covering up for the approval of the countless enterprise agreements with similar unlawful terms that were **approved by the FWC in breach of the Commonwealth law** over a number of years.

IMPORTANT!

Commissioner Johns was applying a wide range of unlawful/criminal methods to support the UPA's lawyers, who were unable to prove the legitimacy of the terms of the EA, which I was opposing.

Commissioner Johns **openly acted for and on behalf of the UPA** (party to proceeding) and **the Unions** (party to proceeding). After months of litigation, being unable to provide any legally sustainable argument, he [Johns C] resorted to **the abuse of the power of the Office of the Commissioner**.

Commissioner Johns had stopped the hearing half-way through and instructed the UPA to stop registration of the Enterprise Agreement preventing me from further exposing the serious systematic offences committed by the UPA, by the Unions and by the FWC in the course of the approval of the EA.

3.7 As a result of my action, the UPA EA was not approved and for **three years** (!) the UPA was functioning without the EA, misleading their workers that the EA had been approved by the

From the desk of Igor Grabovsky

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FWC, while the FWC was “looking in the other direction” on the absence of the EA, covering up for misconduct of its members and shielding the offenders.

Both Unions [the HSU and ANMF] had full knowledge of the illegitimacy of the similar terms of the EAs across the aged care sector Australia-wide, but both Unions did chose to support and collaborate with the offenders instead of defending the rights of the workers.

10 3.8 Both Applicants [Unions] are instrumental for the creation of the regulatory instruments, which establish a juristic environment for the unscrupulous employers to defraud the aged care workers with perfect impunity, and such a fact establishes **a motive for the Unions to carry on the Matters in a manner that is not in the best interest of the aged care workers.**

3.9 Both Applicants (Unions) are responsible for collaboration with the peak bodies against the interest of the aged care workers, which they (Unions) are suppose to represent and defend.

3.10 **The amicus brief is crucial:**

- 20 (i) for the exposure of systematic agreements between the Unions and the peak bodies that result in the defrauding of the aged care workers by the employers with perfect impunity;
- (ii) for the exposure of systematic agreements between the Unions and the peak bodies that result in the exploitation of the aged care workers by the employers to a degree that constitutes *modern slavery*;
- (iii) for the exposure of systematic agreements between the Unions and the peak bodies which deprave the aged care workers of a chance to get justice in the FWC;
- 30 (iv) for evaluation of the necessity for any changes in any Award relevant to the proceedings;
- (v) for the exposure of the direct link between the unlawful terms of the EA agreements approved by the Unions, peak bodies and the FWC, and exploitation and theft of the earnings of the aged care workers by the employers;
- (vi) for the exposure of conflict of interest of the Unions [the HSU and ANMF] in dealing with the Matters;

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PART IV *Premises for Application – conduct of the FWC*

4.1 On the 05 March 2014, the Injured Worker applied to the FWC to arbitrate the Dispute pursuant to sec. 739 of the *Fair Work Act 2009* originating matter **C2014/3313**.

4.2 There were four points of the dispute, which in turn, were based upon two fundamental grounds:



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- (i) **an excessive workload imposed upon the Injured Worker by the employer** – the Injured Worker was forced to perform work that must be executed by three persons of higher classification; and
- (ii) **administration of medicine** – the Injured Worker was forced to administer medicine to the aged care recipients – a task for which she has no prescribed qualification.

10 4.3 The Injured Worker's claims (and my legal stance) are based on applicable laws (statute) and supported by objectively verifiable evidences and constitute a *prima facie* case.

The only way anyone could “win” the case against the Injured Worker, is by acting against the law of the Commonwealth, and that is exactly what had happened in the jurisdiction of the FWC.

4.4 THE FIRST GROUND [as 4.2(i) above] in matter C2014/3313 (excessive workload) had been dealt with by **Deputy President Anna Booth**.

20 Booth DP has upheld a jurisdictional objection made by the *unauthorized* representative of the UPA* for the FWC to arbitrate the *excessive workload* dispute based on unlawful terms of the EA that were in conflict with the Commonwealth law (the *Fair Work Act 2009* and the *Work Health and Safety Act 2011*).

* United Protestant Association NSW Limited is a public company

4.5 In her Decision [2014] FWC 5634, Booth DP failed to address the fundamental grounds introduced and advanced by me:

- 30 (i) illegitimate representation of an incorporated entity (UPA is a public company) in the jurisdiction of the FWC by unauthorised persons that prevented to establish the mind of a body corporate; and
- (ii) unlawful nature of the relevant terms of the EA that render ineffective sec. 186(6) of the *Fair Work Act 2009* and in breach of secs. 19, 31, 44 and 272 of the *Work Health and Safety Act 2011*.

40 4.6 **Booth DP arrived to her Decision in error of law, in error of fact, in error of determination and those errors are the result of the lack of due regard to the evidence, facts and applicable laws and it was a deliberate act of perverting the course of justice by the FWC.**

Booth DP was acting in violation of the Commonwealth law and fundamental principles of the Rule of Law, namely:

- (i) she recognise an instrument that endorses the breach of the Commonwealth Law as a legitimate “authority”; and
- (ii) she recognised a deed made in breach of statute law (an offence) as a legitimate action; and

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- (iii) she tampered with evidences, wilfully omitting, rejecting or otherwise neglecting the objectively recognisable evidences provided by the Injured Worker's representative (by me); and
- (iv) she refused to comply and to enforce the Respondent's (UPA) compliance with the statutory procedural requirement stipulated in sec. 596 of the *Fair Work Act 2009*.

4.7 Booth DP has been given an opportunity to correct obvious errors she made in her Decision [2014] FWC 5634 through the mechanism of application of sec. 602 of the *Fair Work Act 2009*. Booth DP refused to correct the errors and her refusal has established the **deliberate nature of her transgression**.

4.8 My application under sec. 602 of the *Fair Work Act 2009* was also designed to prevent the use of Decision [2014] FWC 5634 as an "authority" in other matters to any unsuspected and/or uninformed user (be it a litigant or a lawyer or a tribunal) because in its current form it is an **instrument of crime**.

4.9 THE SECOND GROUND [as 4.2(ii) above] in matter C2014/3313 (administration of medicine) had been dealt with by **Vice President Michael Lawler**.

In December 2014 Booth DP was replaced: firstly by Vice President Hatcher and then by Vice President Lawler.

4.10 After a two day hearing (20 March and 02 April 2015) Lawler VP made Decision [2015] FWC 2504, where he has ruled that it is legal for an employer to direct a Care Service Employee Grade 2 ("**the CSE-2**"), to administer medicine to the aged care recipients in the aged care facilities, the **function for which [any] CSE-2 has no prescribed qualifications**.

4.11 In arriving to his decision, Lawler VP has adapted the position of the UPA represented by Mr. Tony (Anthony) Saunders*, who submitted that **there is no statutory or regulatory regime in Australia to regulate administration of medicine in aged care facilities in Australia (!?)**.

* **Mr. Anthony Saunders**, the barrister at the time of the hearing (March-May 2015), is currently occupying the Office of Deputy President of the FWC. Mr. Saunders did fail to disclose that on the moment of the hearing he was in negotiation with the FWC for the position of Commissioner, a position, which he received right after the conclusion of matter C2014/3313. Mr. Saunders was instrumental to the creation of decision [2015] FWC 2504 by acting corruptly and providing the FWC with false and misleading information, which the FWC (**habitually and customary**) preferred to the objectively verifiable evidences produced by the lay Attorney of the Injured Worker. In 2019 (matter C2018/7219) Mr. Saunders was the member of the Full Bench in the appeal matter of the decision made by Johns C in relation to the very same Dispute where Saunders DP was acting as a barrister and committed serious offences. Of course, my protest against his (Saunders') participation in making a decision in any matter related to the Dispute due to **direct and obvious conflict of interest has been rejected by Ross P.**

4.12 Lawler VP was acting in violation of the law and fundamental principles of law, committing serious offences, namely, he:

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- (i) has improperly influenced the witnesses; and
- (ii) has prevented the record of evidences exposing a serious crime (multiple cases of suspicious deaths/manslaughter of the aged care recipients); and
- (iii) has endorsed falsification of documents; and
- 10 (iv) has discriminated me against a barrister and a solicitor, who were acting for the UPA, by denying the obvious/objectively recognisable evidence produced by me in favour of fraudulent and unsubstantiated grounds of the UPA defence, accepting, without a doubt, ever-changing submissions based on a false premise(s) made by Mr. Saunders (as a barrister); and
- (v) neglected/refused to accept the *prima faciae* evidences provided by me in support of the existence of the legislative and regulatory regimes that govern the administration of medicine in Australia; and
- (vi) acted outside his (the FWC) jurisdiction; and
- 20 (vii) was unfit to perform his statutory duty due to his health condition*.

* IT MUST BE NOTED: While the knowledge of Mr. Lawler's illness is in public domain, the members of the FWC continue denying the obvious, refusing to accept that Michel Lawler impaired psychological condition made him unfit for duties. The members of the FWC (Hatcher VP, Kovacic DP, Johns C, Clancy DP, Masson DP and Wilson C) contradict their own boss (President Ross), who confirmed Lawler's illness answering the Parliamentary Committee.

30 4.13 Booth DP and Lawler VP have arrived to their decisions in gross error of facts, law and determination. The errors made by Booth DP and Lawler VP are obvious on the face of statute and regulatory documents issued by or on behalf of the Commonwealth:

the *Fair Work Act 2009*;
 the *Work Health and Safety Act 2011*;
 the *Health Practitioner Regulation National Law* ;
 the *Aged Care Act 1997*;
 the *Guiding principles for medication management in residential aged care facilities*;
 the *Nursing Guidelines: Management of Medicines in Aged Care*;
 40 the *Directions by NMB of the AHPRA*, and

on the face of the objectively verifiable evidences submitted by the Representative of the Injured Worker (by me).

Decisions [2014] FWC 5634 and [2015] FWC 2504 are the *fraudulent official instruments* that **perverted the course of justice** and **facilitated and endorsed multiple serious offences**.

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Both decisions became the instruments of crime and they have been continuously used by the unscrupulous aged care service providers, which are acting upon a *template agreement* and advice of a peak body – Aged & Community Services Australia (“**the ACSA**”) against the law of the Commonwealth, for **massive defrauding of the workers and the Commonwealth exploiting the workers to a degree that constitutes modern slavery.**

Both Decisions have facilitated and contributed to multiple deaths of the aged care recipients!

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4.14 ALL THE FOLLOWING after C2014/3313 matters (over 40 proceedings) were instigated by me to correct the multiple errors (serious offences) made by the FWC in the original matter C2014/3313.

4.15 My efforts to get justice have ignited a “*chain reaction*” from the members of the FWC, who were and are trying to cover up for the misconduct of their colleagues hoping to avoid exposure of their offences and punishment by relentlessly bullying the Representative of the Injured Worker (me) into “surrender” *to accept the FWC fraudulent rulings and to recognize the criminal behaviour of the FWC members as a norm.*

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4.16 Trying to cover up for the offence committed by the UPA and its numerous lawyers and hiding the facts of systematic violation of the law of the Commonwealth by the members of the FWC, the following members of the Fair Work Commission committed serious offences:

- (i) Mr. **Ross**, President of Fair Work Commission;
- (ii) Mr. **Johns**, Commissioner;
- (iii) Mr. **Hatcher**, Vice President;
- (iv) Mr. **Cantanzariti**, Vice President;
- (v) Mr. **Saunders**, Deputy President;
- 30 (vi) Ms. **Booth**, Deputy President;
- (vii) Mr. **Gostencnik**, Deputy President;
- (viii) Mr. **Clancy**, Deputy President;
- (ix) Mr. **Masson**, Deputy President;
- (x) Mr. **Sams**, Deputy President;
- (xi) Ms. **O’Neill**, General Manager;
- (xii) Mr. **Godfrey**, Manager for NSW and ACT;
- (xiii) Mr. **Boulton**, Senior Deputy President;
- (xiv) Mr. **Lawler**, Vice President;
- (xv) Ms. **Gooley**, Deputy President;
- 40 (xvi) Ms. **Drake**, Senior Deputy President;
- (xvii) Mr. **Hamilton**, Deputy President;
- (xviii) Ms. **Bissett**, Commissioner;
- (xix) Ms. **Hunt**, Commissioner;
- (xx) Ms. **Asbury**, Deputy President;
- (xxi) Mr. **Wilson**, Commissioner;
- (xxii) Mr. **Hampton**, Commissioner;
- (xxiii) Mr. **Colman**, Deputy President;

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- (xxiv) Mr. **Anderson**, Deputy President;
- (xxv) Ms. **Young**, Deputy President;
- (xxvi) Ms. **Millhouse**, Deputy President;
- (xxvii) Ms. **Mansini**, Deputy President;
- (xxviii) Ms. **Harper Greenwell**, Commissioner;
- (xxix) Ms. **Scarlett**, Acting Director of the FWC;
- (xxx) Ms. **McKenna**, Commissioner.

10 4.17 As a consequence of such a “*chain reaction*”, every following matter, instigated in relation to the Dispute, had resulted in more and more serious violation of the law of the Commonwealth by the members of the FWC, who foolishly continue to believe they can get away with their serious and systematic crimes.

This “*chain reaction*” brought the FWC in a state of disrepute.

4.18 **The *amicus brief* is crucial:**

- 20 (i) for exposing the methods used by the FWC in dealing with workplace issues and with the approval of the EAs in the aged care sector in particular;
- (ii) for exposing the level of legal expertise of the FWC members in general and the members of the Full Bench, as it is currently comprised in matters AM2020/99, AM2021/63 and AM2021/65, in particular;
- (iii) for exposing conflict of interest of the members of the Full Bench as it is currently comprised in matters AM2020/99, AM2021/63 and AM2021/65
- 30 (iv) for making an informed decision **by the aged care workers**, whose interests are represented by the Unions about trust in competence, integrity and fitness of the FWC as it is currently constituted in matters AM2020/99, AM2021/63 and AM2021/65 to execute its statutory functions and exercise its powers and authority in full compliance with the Commonwealth law and in public interest.

PART V *Premises for Application – role of the Royal Commission in deterioration of a situation in the aged care industry*

40 5.1 In the course of litigation, I have complained to numerous Commonwealth and State [NSW] government institutions reporting serious offences committed in the Aged Care sector by various legal and natural persons.

5.2 Dealing with the growing number of offences committed by the persons, who suppose to police and regulate the Aged Care sector, I saw the sheer incompetence and wilful negligence of the government institutions to deal effectively with the complaints.

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5.3 On the 26 June 2018, I filed the MOTION TO ESTABLISH ROYAL COMMISSION INTO AGED CARE INDUSTRY with the Department of the Prime Minister and Cabinet.

5.4 My Motion became one of the triggers for establishing the Royal Commission Aged Care Quality and Safety (“**the RC**”).

5.5 No Royal Commission in the recent past has justified its existence; based on the Final Reports, it became evident that the main goal for the Commission(s) was to channel the “steam of public anger” away from the real source of the problem. The RC is not an exception.

5.6 Replying to the question about the necessity to increase a number of the aged care personnel, Scott Morrison replied: “... *I can't make nurses fall from the sky...*”

At the same time, the Prime Minister was very successful in making the *aged care workers fall from the aged care industry* – and the **flawed** RC Final Report did play a vital role in this fiasco.

5.7 In the Final Report, the Commissioners wrote: “... *To envisage a new aged care system, we need to understand the aged care system as it exists today, including the problems in the system.*” (Final Report, Volume 1, pg. 61)

... *To understand the aged care system as it exists today* – it’s exactly what the RC **had failed to do** and, as a result, the Final Report had inflicted severe damages to the already wounded Aged Care sector.

5.8 Filing the Motion, I was pursuing my own reasons – my goal was to obtain the particular “arms length” conclusions that would allow me to escalate the Dispute to the next level pursuing the resolution in compliance with the Rule of Law. In this respect my calculations turned out to be correct and the RC had delivered a desired (for me) result.

5.9 The Final Report confirmed my fears about the RC’s futility and I did offer (through various mechanisms and instruments) the government:

To commission Igor Grabovsky to produce an *alternative report* into the Aged Care Quality and Safety (“**the Alternative Report**”)

Reasons:

The [members of] Royal Commission into Aged Care Quality and Safety (“**the Commission**”) lacks the prerequisite expertise and, as a result, the Commission is incapable to detect/expose the offenders and/or to establish the reasons that caused dereliction of the Aged Care sector (“**the Aged Care**”) and/or to take/recommend any effective measures that would rectify the problems in the Aged Care.

The *Alternative Report* will:

- identify the causes of the problems in the Aged Care from the angle and upon objectively verifiable evidences that were never explored by the Commission;
- expose the errors made by the Commission;

From the desk of Igor Grabovsky

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- recommend the effective measures for rectifying problems in the most efficient way; and
- provide an effective tool of *public control* over the institution of the Royal Commission by revealing information which otherwise would be hidden from the Parliament and the Australian people.

My offer was neglected by all recipients and later rejected.

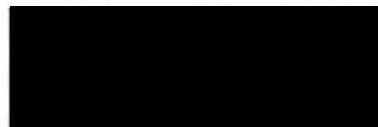
10 5.10 Despite the flawed nature of the Final Report, it is, nevertheless, a document that requires a complex and methodical implementation – at least, if implemented that way, it would make minimal damage to the Aged Care system. If the Recommendations would be selectively picked by various persons and used to achieve some immediate and isolated goals without a methodical approach to the changes, it will completely demolish the system and harm the aged care workers instead of benefiting them.

20 5.11 That is exactly what is going on in AM2020/99, AM2021/63, AM2021/65 – **the Unions, who have their own agenda, which does not necessary coincide with the interest of the aged care workers**, picked one Recommendation from the Final Report (Recommendation 84, Vol. 1, pg. 263) and decided to vary an award(s) without addressing and fixing the problems that caused harm to the aged care workers and dereliction of the Aged Care system in the first place*.

IT MUST BE NOTED: Those problems were willfully avoided by the RC and were never addressed or mentioned.

5.12 **The amicus brief is crucial:**

- 30 (i) for the exposure of the **real** problems (in relation to the agenda of the Matters) that are causing harm to the Aged Care system and workers, which were never addressed (or even mentioned) by the RC or any other official, including the Unions and the peak bodies;
- (ii) for evaluation of the necessity for any changes to any Award relevant to the proceedings;
- 40 (iii) for understanding of how the changes to the Award(s) will affect the aged care workers: will those changes benefit the aged care workers or are those changes designed to conceal offences committed against the Aged Care workers and to prevent workers from receiving full compensation for the losses and damages inflicted upon them by various offenders;
- (iv) for establishing the course of action in **full compliance with the Commonwealth law** necessary for bringing the working conditions (including classification) and remuneration of the aged care workers to a level that would insure their health and safety in the work place in compliance with the applicable law and would **properly reflect the work value of the aged care workers.**



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PART VI *Role of the Amicus curiae and the amicus brief*

6.1 The legal situation in the Matters is peculiar: the Aged Care Workers, who have **legitimate interest** and are suppose to be the **beneficiary** (collectively) of the results of this proceeding, have no direct [effective] influence either on the development of a proceeding or on the juristic and procedural methods, chosen by a third party (lawyers), for achieving goals, declared in the applications in matters AM2020/99, AM2021/63 and AM2021/65.

10 6.2 I have taken upon myself the role of the *Amicus curiae* because I am in possession of expertise and information that have a bearing on the core issues in the Matters that involve broad public interest.

6.3 The *amicus brief* is designed to inform the Aged Care Workers on the choice(s) they have, and about information that have been hidden from them, by exposing the problems and the sources of the problems related to the essence of the Matters.

20 6.4 My approach is guided by the intention to divert the proceedings onto the path of full compliance with the Commonwealth law without pursuing the offenders within the frame of the Matters.

6.5 The *amicus brief* is not designed to pursue a prosecution of any particular person. I am in preparation of a number of proceedings in suitable jurisdictions against the offenders; I don't need this platform (matters AM2020/99, AM2021/63 and AM2021/65) to use it as a venue for prosecution simply because the FWC is not a suitable tribunal for prosecution and does not have power, function or authority to impose punishment upon the offenders.

30 6.6 Also, the *amicus brief* will provide the opportunity for the persons, who currently are acting in various [key] roles in the Matter, to evaluate the legitimacy of their stances and actions, and to consider the interest of the Aged Care Workers and not the Unions, because those interests differ quite considerably.

6.7 There are no statutory requirements that would establish an exact procedure for the involvement of *Amicus curiae* in the FWC jurisdiction. Section 509 (2)(b) of the *Fair Work Act 2009* permits the FWC to invite a person to make a submission, subject to terms and conditions determined by the FWC.

40 6.8 Due to known to me facts, which I intend to release in public domain, many key participants in the Matters have conflict of interest that might result in [their] objection to the admission of the *amicus brief* into the process.

There are no statutory prerequisites or ground to reject the submission of the *amicus brief*.

6.9 Therefore, I do not ask the FWC for permission to make a submission, but instead, I request the Full Bench to issue the Direction that would stipulate the terms of submission of the *amicus brief* [draft of the Directions is attached as Attachment 2].

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Such an approach will rest the burden of accountability on those persons, who rejected or in any other manner prevented the release of information vital to proceedings of broad public interest in the jurisdiction of a tribunal, where those proceedings have been carried out.

IT MUST BE NOTED: Should the Directions to be issued and the *amicus brief* is distributed among the Aged Care Workers and relevant Government officials and authorities, I will not make any further submissions in jurisdiction of the FWC (unless I am directly asked to do so).

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6.10 In conclusion, I would like to address the legal practitioners (solicitors, barristers and members of the FWC) involved in the Matters with one laconic axiom:

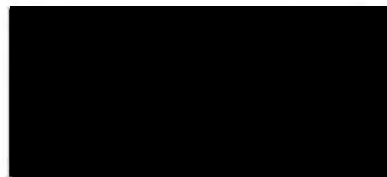
A lawyer must protect the law – even when a lawyer is defending a client, a lawyer must protect the LAW!

Currently, in the Matters, this axiom is ignored.

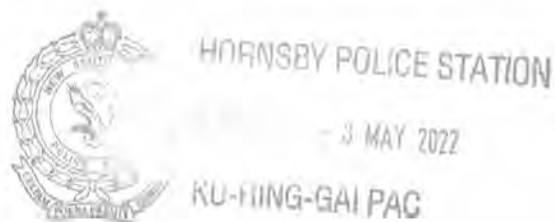
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THE END OF SUMMARY OF THE AMICUS BRIEF

Next page 19 is the draft of the Directions



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ATTACHMENT 2

DRAFT

DIRECTIONS*Fair Work Act 2009*

s.158 —Dispute resolution

Aged Care Award 2010

(AM2020/99; AM2021/63 and AM2021/65)

JUSTICE ROSS, PRESIDENT

MELBOURNE, XX MAY 2022

DEPUTY PRESIDENT ASBURY

10 COMMISSIONER O'NEILL

Further to the Application, dated 08 May 2022, from Mr. Igor Grabovsky to act in matters AM2020/99, AM2021/63 and AM2021/65 in a role of the *Amicus curiae*, the following directions are made:

1. Mr. Grabovsky will submit the *amicus brief* by 4pm on **Tuesday, 02 August 2022**.
- 20 2. The Applicants in matters AM2020/99, AM2021/63 and AM2021/65 to distribute the *amicus brief* among the Aged Care Workers, Members and non-Members of the corresponding Unions, for consideration. The copies of the *amicus brief* to be available to workers **within 30 days** from submission of the brief to Fair Work Commission.
3. The Commonwealth is to distribute copies of the *amicus brief* among government structures responsible for the Health and Aged Care by **Tuesday, 30 August 2022**.

Any further directions for the Applicants and the Commonwealth are as Fair Work Commission thinks fit.

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TOTAL: 19 (nineteen) pages.

