

24 March 2021

Associate to the Hon. Justice Ross AO
Fair Work Commission
Level 4, 11 Exhibition Street
MELBOURNE VIC VIC 3000

BY EMAIL ONLY: chambers.ross.j@fec.gov.au; amod@fwc.gov.au

Dear Associate

Re: AM2020/99 – Application by the HSU to vary the Aged Care Award 2010

We refer to this matter.

1. On 18 December 2020 FWC issued directions in relation to this matter providing for, among other things, that the Applicants and other union parties file evidence and submissions by 4:00PM on Thursday 1 April 2021 (**the directions**).
2. On 1 March 2021 the final report of the Royal Commission into Aged Care Quality and Safety was made available (**the Royal Commission report**). The following recommendation was contained within the Royal Commission report:

“Employee organisations entitled to represent the industrial interests of aged care employees covered by the Aged Care Award 2010, the Social, Community, Home Care and Disability Services Industry Award 2010 and the Nurses Award 2010 should collaborate with the Australian Government and employers and apply to vary wage rates in those awards to:

- a. reflect the work value of aged care employees in accordance with section 158 of the Fair Work Act 2009 (Cth), and/or*
- b. seek to ensure equal remuneration for men and women workers for work of equal or comparable value in accordance with section 302 of the Fair Work Act 2009 (Cth).”*

3. On 16 March 2021 solicitors for the Australian Nursing and Midwifery Federation (ANMF) sent correspondence to the Commission outlining, among other things, its intention to:
 - a. file an application pursuant to section 158 and /or 302 of the Act with respect to the *Nurses Award 2010* (**the Nurses Award**); and
 - b. apply to vary the directions.
4. United Workers Union (UWU) is entitled to represent the industrial interests of aged care employees working in residential aged care covered by the *Aged Care Award 2010* (**the Aged Care Award**) and the Nurses Award, and aged care employees working in home care covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (**the SCHADS Award**).
5. UWU has been giving consideration to the Royal Commission report and recommendations since its publication, and more recently the correspondence sent to the Commission by the ANMF. We note that one of the implications of the ANMF correspondence is that the Commission is likely to have before it applications in relation to the Aged Care Award and the Nurses Award, particularly with respect to employees working in residential aged care but not the SCHADS Award, in relation to employees working in home care.
6. In these circumstances we have concluded that it is appropriate that UWU file an application pursuant to section 158 and/or 302 in relation to the SCHADS Award. We intend to adopt the timeframe outlined by ANMF in relation to the application it has foreshadowed concerning the Nurses Award, and intend to file an application by 17 May 2021.
7. We agree with the suggestion made by ANMF – that the application currently on foot in relation to the Aged Care Award, and the foreshadowed application in relation to the Nurses Award should not be dealt with in isolation from one other. We further suggest that the application we have foreshadowed in relation to the SCHADS Award should also be dealt with in conjunction with the applications relating to these two other Awards.

8. We agree with the concerns expressed by ANMF in relation to the directions, both in terms of the need for parties to collaborate with each other on the basis of the Royal Commission's Report, with Government, and now in the light of the two further foreshadowed applications. We support the proposition that these directions be revisited.

We note the Commission has listed this matter for conference this Friday 26 March 2021 and confirm our intention to appear at this conference.

Yours faithfully



Ben Redford
Director
United Workers Union