



## STATEMENT

*Fair Work Act 2009*

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

### **Aged Care Award 2010**

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

### **Nurses Award 2020**

(AM2021/63)

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

(AM2021/65)

Aged care industry

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT ASBURY  
COMMISSIONER O'NEILL

MELBOURNE, 24 APRIL 2022

*Applications to vary modern awards – work value – Aged Care Award 2010 – Nurses Award 2020 – Social, Community, Home Care and Disability Services Industry Award 2010 – mention listed – digital hearing book – future programming – joint hearing plan – research reference list – industry profiles – historical summaries of awards – further directions issued.*

[1] On 6 April 2022, the Commission issued a statement concerning the programming and hearing of this matter (6 April Statement)<sup>1</sup>.

[2] A mention was listed for 12 noon on Friday, 22 April 2022. In advance of the mention, parties were directed to inform each other of the witnesses required for cross-examination and prepare a joint hearing plan addressing the order of witnesses, each parties' approximate estimates of time for cross examination and the location of each of the witnesses.

### **Objections to evidence and the hearing plan**

[3] The 6 April Statement directed that any objections to the evidence contained in the various witness statements provided to date were to be filed by 4:00pm on Thursday 21 April 2022.

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<sup>1</sup> [2022] FWCFB 52.

[4] The parties' responses noted that they considered that parts of the material upon which other parties proposed to rely were objectionable (including on the grounds of relevance and hearsay), but they did not propose to take any formal objection to that material. Each of the parties reserved their right to address such matters in their closing submissions in terms of the weight, if any, to be given to parts of the witness statements. We are content to proceed on that basis.

[5] The Unions have filed 6 expert witness reports and statements by some 97 lay witnesses. The Union lay witness evidence falls into 2 broad categories:

- 16 witness statements by various union officials (the Union lay witnesses); and
- 81 witness statements by persons employed in the aged care and home care sections (the Employee lay witnesses).

[6] The Employer parties have filed 9 lay witness statements (the Employer lay witnesses).

[7] **Attachment A** is a document which groups the 106 witnesses into the categories set out above.

[8] All of the 106 witnesses are required for cross-examination.

[9] During the course of the Mention on 22 April 2022 the Commission proposed that in order to facilitate the efficient use of Commission resources, the hearing of the Employee lay witness evidence would be by a single member of the Full Bench, namely Commissioner O'Neill. Mr Ward, on behalf of ABI, ACSA and LASA and Mr Redford, for the UWU, did not object to the course proposed. Counsel for the HSU and ANMF sought time to obtain instructions. The HSU subsequently advised:

'The HSU is of the view that there would be benefit in the hearing of some of the lay evidence by the Full Bench but understand that this is a matter for the Commission having regard to the efficient hearing and disposition of the proceedings.'<sup>2</sup>

[10] The ANMF agrees with the view expressed by the HSU.<sup>3</sup>

[11] It is anticipated that the cross examination of the 81 Employee lay witnesses will be relatively brief. The credit of these witnesses is not in issue; though the relevance and weight to be given to their evidence is likely to be contested. In these circumstances we think the most efficient course is to have a single member of the Full Bench hear this evidence and that is the course we will adopt. We note that no party contended that their interests were adversely affected by the adoption of such a course. At the conclusion of evidence of the 81 Employee lay witnesses, Commissioner O'Neill will prepare a report to the Full Bench in respect of that evidence. All parties will have an opportunity to comment on that report before it is finalised.

[12] The Full Bench will sit to hear the remaining witnesses (that is, the 6 experts, 16 Union lay witnesses and the 9 Employer lay witnesses).

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<sup>2</sup> See [correspondence](#) from Maurice Blackburn dated 22 April 2022.

<sup>3</sup> See [correspondence](#) from Gordon Legal dated 22 April 2022.

[13] A hearing plan was filed by the HSU on 21 April 2022, noting that it had not yet been approved by the employer parties. The HSU's hearing plan is at **Attachment B**.

[14] The HSU's hearing plan includes details of the site inspections to be undertaken on Wednesday 27 April in Sydney and Thursday 28 April in Melbourne. We confirm that Deputy President Asbury will attend the inspections in Sydney and Commissioner O'Neil will attend the inspections in Melbourne.

[15] The HSU's hearing plan provides that the parties will make opening submissions commencing at 9:30am on Tuesday 26 April and in the afternoon Mr Hayes, Ms Hutchins and Mr Friend will be cross examined. Each of these witnesses are HSU officials and the Commission will sit as a Full Bench to hear their evidence.

[16] In light of the fact that the evidence of the 81 Employee lay witnesses will be heard by a single member of the Full Bench, the HSU's hearing plan will need to be revised. The revisions are to ensure that the experts, the Union lay witnesses and the Employer lay witnesses are not heard in the same morning or afternoon session as the Employee lay witnesses. These revisions are to avoid the need to constantly adjust the composition of the Bench. Further, Deputy President Asbury is unavailable on Friday 29 April and the President is unavailable on Wednesday 4 May 2022.

[17] The revised hearing plan is to be filed by no later than **4pm on Wednesday 27 April**.

[18] We accept that in the time provided it may not be possible to complete a hearing plan to cover the duration of the proceedings; but the hearing plan filed should, at least, identify the witnesses to be called on 29 April and 2, 3 and 4 May 2022. To be clear, we require a joint hearing plan, that is, a hearing plan agreed to by all parties.

### **Mode of hearing**

[19] The HSU, UWU and ABI advised that their advocates would appear via Microsoft teams, except for the first day of the Hearing, at which the HSU representatives will attend in person at the Sydney Registry. The ANMF initially advised that its representatives proposed to attend the duration of the hearing in-person at the Melbourne Registry.<sup>4</sup> The ANMF subsequently informed the Commission that the ANMF representatives will attend the hearing remotely via Microsoft Teams, rather than attending the Commission's premises.<sup>5</sup>

[20] Unless otherwise advised we are proceeding on the assumption that all witnesses will appear remotely via Microsoft Teams. If any witnesses are to appear in person the Commission is to be advised at least one working day prior to the witness' appearance.

### **Digital Hearing Book**

[21] The 6 April Statement informed the parties that the Commission would prepare a Digital Hearing Book (DHB) to assist interested parties. A draft index was published with that statement and parties were requested to provide comments on the draft index by 13 April 2022.

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<sup>4</sup> See [correspondence](#) from Gordon Legal dated 21 April 2022.

<sup>5</sup> See correspondence from Gordon Legal dated 22 April 2022.

[22] We received responses from the [Australian Nursing and Midwifery Federation](#) (ANMF) on 13 April 2022 and from the [Health Services Union](#) on 19 April 2022.

[23] The ANMF identified some typographical errors and noted that the following documents were omitted from the index:

1. Expert report/statement of Honorary Associate Professor Anne Junor dated 28 October 2021.
2. Expert report/statement of Associate Professor Meg Smith and Dr Michael Lyons dated 26 October 2021.
3. ANMF Tender Bundle.

[24] The HSU also identified the following documents as being omitted from the index:

1. Supplementary report of Professor Charlesworth;
2. Statement of Mr David Eden;
3. Supplementary statement of Mr Christopher Friend
4. Statement of Ms Cheyne Woolsey (ACSA, LASA and ABI witness)

[25] No other correspondence was received in relation to the DHB. The index has been updated in accordance with the responses of the ANMF and HSU.

[26] Applicants and other union parties were directed to file evidence and submissions in reply 21 April 2022. We received submissions from the following parties:

- [HSU](#)
- [ANMF](#)
- [UWU](#)

[27] These submissions have also been added to the DHB. A further version of the DHB will be published on Tuesday 26 April 2022. Any further issues with the DHB can be raised by the parties at any time.

### **Additional material**

[28] Commission staff are preparing the following documents which will be published on the Commission's website in the coming weeks:

- Information notes setting out the history of wages and classifications in the Aged Care Award 2010, Nurses Award 2020 and the Social, Community Home Care and Disability Service Industry Award 2010.
- A research reference list setting out all of the research materials and data sources referred to in the parties' submissions. The research reference list also includes a list of cases referred to by the parties in their submissions.

- Industry profiles for the Aged Care Award 2010, Nurses Award 2020 and the Social, Community Home Care and Disability Service Industry Award 2010 .

[29] We propose to have regard to the materials set out in the Research reference list in our consideration of the applications.

[30] Parties can provide any comments in relation to the material in the research reference list, the information notes and Industry profiles in their closing submissions to be filed on 3 June 2022.

PRESIDENT

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## Categorisation of Witness Statements

### Expert Witnesses

1. Dr Sarah Charlesworth
2. G Meagher
3. Dr Kathleen Eager
4. Associate Professor Smith and Dr Michael Lyons
5. Honorary Associate Professor Anne Junor
6. Dr Susan Kurrle

### Union lay witnesses

#### *HSU*

1. L Svendsen – Senior Industrial and Compliance Officer
2. G Hayes – Secretary NSW/ACT Branch, President
3. E Hutchins – Divisional Manager Aged Care and Disabilities NSW/ACT Branch
4. D Eden – Assistant Secretary, Victoria No.1 Branch
5. C Friend – Industrial Bargaining Officer
6. L Twyford – Senior Vice President
7. M Jennings – Organiser
8. J Eddington – Legal and Industrial Officer HACSU

#### *ANMF*

9. A Butler – Federal Secretary
10. K Wischer – Senior Federal Industrial Officer
11. K Chrisfield – Occupational Health and Safety Unit Coordinator
12. K Crank – Industrial Officer
13. P Gilbert – Assistant Secretary
14. R Bonner – Director, Operations and Strategy
15. A Venosta – Official

#### *UWU*

16. M Coad – Coordinator Policy, Stakeholder Engagement and Professional Development

### Employee lay witnesses

#### *HSU*

1. V Ellis - Homemaker – Aged Care
2. T Roberts – Kitchenhand and carer – Aged Care
3. S Barnes – Property Concierge – Aged Care

4. S Ghimire – Care Service Employee – Aged Care
5. H Platt – Care Supervisor – Aged Care
6. C Glass – Carer – Aged Care
7. C Austen – Support Worker – Aged Care
8. S O’Donnell – Laundry – Aged Care
9. A Curry – Nurse – Aged Care
10. A Schmidt – Specialised Dementia Care Worker – Aged Care
11. P Little – Administration Officer – Aged Care
12. R Sodermans – Care Worker – Aged Care
13. Donna Kelly – Extended Care Assistant – Aged Care
14. Deborah Kelly – Support Worker – Aged Care
15. D Kent – Chef – Aged Care
16. A Charlier – Kitchen Hand, Cleaner and Laundry Hand – Aged Care
17. F Gauci – Administration Officer – Aged Care
18. A Whyte – Property Concierge Maintenance Officer – Aged Care
19. K Youd – Care Assistant – Aged Care
20. K Mills – Gardener – Aged Care
21. K Sweeney – Administration Officer – Aged Care
22. J Gilchrist – Lifestyle and Volunteer Coordinator – Aged Care
23. J Peacock – Volunteer Coordinator – Aged Care
24. M Castieau – Chef – Aged Care
25. L Cowan – Personal Care Worker – Aged Care
26. L Flegg – Senior Administration Officer – Aged Care
27. M Harden – Recreational Activities Officer – Aged Care
28. P Jones – Care Services Employee – Aged Care
29. A Field – Laundry Hand & Chef – Aged Care
30. K Boxsell – Care Staff – Aged Care
31. C Sedgman – Personal Support Worker – Aged Care
32. J Wood – Support Worker - Aged Care
33. P Doherty – Coordinator – Aged Care
34. S Digney – Support Worker – Aged Care
35. L Seifert – Team Leader – Aged Care
36. S Fox – Extended Care Assistant – Aged Care
37. M Phillips – Community Support Worker – Home Care
38. M Purdon – Community Care Worker – Home Care
39. S Wanger – Support Worker – Home Care
40. C Evans – Home Service Worker – Home Care
41. T Heenan – Home Care Employee
42. J Kupke – Carer – Home Care
43. B Payton – Personal Care Assistant – Home Care
44. V Vincent – Home Support Worker – Home Care
45. S White – Home Care Worker

***ANMF***

46. C Spangler – Assistant in Nursing – Aged Care
47. D Power – Assistant in Nursing – Aged Care
48. E Johnson – Nurse – Aged Care

49. H Bucher – Nurse – Aged Care
50. I McInerney – Nurse – Aged Care
51. J Bryce – Nurse – Aged Care
52. J Hofman – Nurse – Aged Care
53. J Alberry – Aged Care Worker
54. L Bayram – Nurse – Aged Care
55. L Hardman – Nurse – Aged Care
56. M Bernoth – Nurse – Aged Care
57. P McLean – Nurse – Aged Care
58. P Breen – Nurse – Aged Care
59. R Nasemena – Personal Care Assistant – Aged Care
60. S Clarke – Personal Care Worker – Aged Care
61. S Voogt – Nurse Practitioner in Gerontology – Aged Care
62. S Hewson – Nurse – Aged Care
63. V Mashford – Assistant in Nursing – Aged Care
64. W Knights – Enrolled Nurse – Aged Care

### ***UWU***

65. J Clarke – Personal Care Worker – Aged Care
66. S Hufnagel – Personal Care Worker – Aged Care
67. T Colbert – Food Services Assistant – Aged Care
68. L Parke – Personal Care Worker – Aged Care
69. R Heyen – Client Services Assistant/Administration Assistant – Aged Care
70. G Bowers – Personal Care Worker – Aged Care
71. C Goh – Aged Care Worker
72. K Conroy – Aged Care Worker
73. K Roe – Aged Care Worker
74. L Grogan – Aged Care Worker
75. M Moffat – Aged Care Worker
76. N Inglis – Aged Care Worker
77. P Wheatley – Aged Care Worker
78. R Dennis – Aged Care Worker
79. S Morton – Aged Care Worker
80. S Toner – Aged Care Worker
81. T Hetherington – Aged Care Worker

### **Employer lay witnesses**

1. P Sadler – Chief Executive Officer ACSA
2. E Brown – Special Care Project Manager – Aged Care
3. C Smith – Executive Leader Service Integrated Communities – Aged Care
4. M Sewell – Chief Executive Officer – Aged Care
5. J Brockhaus – Chief Executive Officer – Aged Care
6. K Bradshaw – General Manager – Aged Care
7. S Cudmore – Chief Operating Officer – Recruitment Solutions Group Australia
8. A Wade – National Manager – Employee Relations and State Manager at ACSA
9. C Woolsey – Chief Human Resources Officer – Aged Care



## Attachment B

## HSU Hearing Plan

## WEEK 1- COMMENCING 26 APRIL 2022

## DAY ONE- TUESDAY 26 APRIL 2022

9.30 am to 1pm	<p>Opening Submissions</p> <ul style="list-style-type: none"> <li>- HSU (45 mins)</li> <li>- ANMF (45 mins)</li> <li>- UWU (10 mins)</li> <li>- ABI (45 mins)</li> </ul> <p>Deal with objections to affidavits (if substantial otherwise to be dealt with at time of each witness giving evidence).</p>
<b>Lunch</b>	
2.00 pm to 4 pm	Cross-examination of Hayes (1/2 hour), Hutchins (1/2 hour) and Friend (1/2 hour).

## DAY TWO- WEDNESDAY 27 APRIL 2022

8.30 am to 10.30 am	<p>Inspect HammondCare Hammondville in Sydney.</p> <p>Details:</p> <ol style="list-style-type: none"> <li>1. Not for profit residential aged care and home care provider. Site consists of both a traditional residential aged care facility and specialist dementia cottages.</li> <li>2. Mike Baird, CEO, has committed to organising a home care inspection onsite.</li> <li>3. <u>11-23 Judd Avenue Hammondville NSW 2170</u></li> <li>4. <a href="https://www.hammond.com.au/locations/hammondville">https://www.hammond.com.au/locations/hammondville</a></li> </ol>
11.15 am to 1.00pm	<p>Inspect RFBI in Concord Sydney</p> <p>Details:</p> <ol style="list-style-type: none"> <li>1. Not for profit residential care facility with a dementia wing.</li> <li>2. <u>4A Cavell Avenue Rhodes NSW 2138</u></li> <li>3. <a href="https://rfbi.com.au/residential-care/concord/">https://rfbi.com.au/residential-care/concord/</a></li> </ol>

<p>2.30 pm to 4pm</p>	<p>Inspect Uniting at the Marion Leichhardt in Sydney</p> <p>Details:</p> <ol style="list-style-type: none"> <li>1. Not for profit residential aged care facility.</li> <li>2. Site is a 130 bed aged care home operating since 2007 which features the household model of care, including four smaller dementia cottages within the service.</li> <li>3. Offers dementia and respite care.</li> <li>4. Head of Aged Care for Uniting will attend.</li> <li>5. 37 Marion St, Leichhardt NSW 2040</li> <li>6. <a href="https://www.uniting.org/services/aged-care-services/facility/uniting-the-marion-leichhardt">https://www.uniting.org/services/aged-care-services/facility/uniting-the-marion-leichhardt</a></li> </ol>
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DAY THREE- THURSDAY 28 APRIL 2022

<p>9.15 am to 11.15</p>	<p>Inspect TLC Aged Care in Clifton Park – Melbourne</p> <p>Details:</p> <ol style="list-style-type: none"> <li>1. 30 mins allowed for RAT (provided on entry), COVID-19 vaccination and mask check, and completion of screening form.</li> <li>2. For profit aged care, purpose built multi-story building including a medical centre.</li> <li>3. CEO Lou Pascuzzi</li> <li>4. 217-241 Queens Parade Fitzroy North 3068</li> <li>5. <a href="https://www.tlchealthcare.com.au">https://www.tlchealthcare.com.au</a></li> </ol>
<p>11.30 am to 1.30pm</p>	<p>Inspect Fronditha Residential Facility and Home Care Thornbury in Melbourne</p> <p>Details:</p> <ol style="list-style-type: none"> <li>1. 30 mins allowed for RAT (provided on entry), COVID-19 vaccination and mask check, and completion of screening form.</li> <li>2. Australian Greek Society for the Care of the Elderly (AGSCE)</li> <li>3. Not for profit, community based Greek language focussed with a 30 bed memory support unit for people with severe dementia. Residential and home care provider.</li> <li>4. CEO: Faye Spiteri</li> <li>5. 335 Station Street Thornbury 3071</li> <li>6. <a href="https://frondithacare.org.au/aged-care-residential-facilities/">https://frondithacare.org.au/aged-care-residential-facilities/</a></li> </ol>

1.45 pm to 3.45pm	<p>Inspect St Pauls Hostel Thornbury in Melbourne</p> <p>Details:</p> <ol style="list-style-type: none"> <li>1. 30 mins allowed for RAT (provided on entry), COVID-19 vaccination and mask check, and completion of screening form.</li> <li>2. Overseen by the Antonine Sisters</li> <li>3. Not for profit, community based small, older facility focussing on the Lebanese community, Arabic speaking, but open to broader community.</li> <li>4. 15-17 Strettle St, Thornbury 3071</li> <li>5. <a href="https://www.stpaulshostel.org.au/">https://www.stpaulshostel.org.au/</a></li> </ol>
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DAY FOUR- FRIDAY 29 APRIL 2022- RESIDENTIAL AGED CARE

9.30 am to 1pm	Cross-examination of seven HSU lay witnesses- Residential Aged Care.
2pm to 4pm	Cross-examination of five HSU lay witnesses- Residential Aged Care.

**WEEK 2- COMMENCING 2 MAY 2022- RESIDENTIAL AGED CARE CONTINUED**  
**DAY FIVE- MONDAY 2 MAY 2022**

9.30 am to 1pm	<p>Cross examination of experts - Charlesworth (1/2 hour), Meagher (1/2 hour);</p> <p>Cross-examination of five HSU lay witnesses- Residential Aged Care.</p>
<b>Lunch</b>	
2.00 pm to 4 pm	Cross-examination of five HSU lay witnesses- Residential Aged Care.

DAY SIX- TUESDAY 3 MAY 2022

9.30 am to 1pm	Cross examination of Kurrle (1/2 hour), Cross-examination of six HSU lay witnesses- Residential Aged Care.
<b>Lunch</b>	
2.00 pm to 4 pm	Cross-examination of five HSU lay witnesses- Residential Aged Care.

DAY SEVEN- WEDNESDAY 4 MAY 2022- HSU (SCHADS)

9.30 am to 1pm	Cross examination of HSU Officials- Eddington (1/2 hour), Eden (1/2 hour), Cross-examination of five HSU lay witnesses- Home Care.
<b>Lunch</b>	

2.00 pm to 4 pm	Cross-examination of five HSU lay witnesses- Home Care.
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DAY EIGHT- THURSDAY 5 MAY 2022- HSU (SCHADS) and ANMF

9.30 am to 1pm	Cross-examination of seven HSU lay witnesses- Home Care.
<b>Lunch</b>	
2.00 pm to 4 pm	Cross-examination of five ANMF Union Official witnesses.

DAY NINE- FRIDAY 6 MAY 2022

9.30 am to 1pm	Cross-examination of three ANMF Union Official witnesses and four ANMF lay witnesses.
<b>Lunch</b>	
2.00 pm to 4 pm	Cross-examination of six ANMF lay witnesses.

**WEEK 3- COMMENCING 9 MAY 2022-**

DAY TEN- MONDAY 9 MAY 2022- HSU and ANMF

9.30 am to 1pm	Cross examination of Eagar (1/2 hour); Cross examination of Junor (1/2 hour), Smith/ Lyons (1/2 hour) and four ANMF lay witnesses.
<b>Lunch</b>	
2.00 pm to 4 pm	Cross-examination of five ANMF lay witnesses.

DAY ELEVEN- TUESDAY 10 MAY 2022- ANMF and UWU

9.30 am to 1pm	Cross-examination of one UWU Union and five UWU lay witnesses.
<b>Lunch</b>	
2.00 pm to 4 pm	Cross-examination of four UWU lay witnesses.

DAY TWELVE- WEDNESDAY 11 MAY 2022- UWU and EMPLOYERS

9.30 am to 1pm	Cross-examination of six UWU lay witnesses.
<b>Lunch</b>	
2.00 pm to 4.30 pm	Cross-examination of two UWU lay witnesses. Cross-examination of two employer witnesses.

DAY THIRTEEN- THURSDAY 12 MAY 2022- EMPLOYERS

9.00 am to 1pm	Cross-examination of four employer witnesses.
<b>Lunch</b>	

2.00 pm to 4.30 pm	Cross-examination of three employer witnesses.
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