

IN THE FAIR WORK COMMISSION

Matter(s) No(s):

AM2020/99, AM2021/63, AM2021/65 –

WORK VALUE CASE – AGED CARE

**Application for revoking and varying the FWC's
decision [2022] FWCFB 77**

10 Applicant/Amicus curiae:

Igor Grabovsky

DOCUMENTS SUBMITTED

1. **Application under section 594(1)(a)(b) and (c) of the *Fair Work Act 2009* to treat this submission (Statement of Intent) as CONFIDENTIAL.**
- 20 2. **STATEMENT OF INTENT – Submission on invitation of Fair Work Commission for Application pursuant to section 603 of the *Fair Work Act 2009* for revoking and varying the FWC's decision [2022] FWCFB 77.**

Dated 23 June 2022

Filed by Igor Grabovsky

Applicant

Amicus curiae

Australian Citizen

Address for Service:

PO Box 1262, WAHROONGA NSW 2076

APPLICATION
to treat this submission (Statement of Intent)
as CONFIDENTIAL

10 I, Igor Grabovsky, am making this application pursuant to section 594(1)(a)(b) and (c) of the *Fair Work Act 2009* asking Fair Work Commission to treat this submission, made in the form of a Statement of Intent, as CONFIDENTIAL.

I am giving my consent to the President of Fair Work Commission to release information contained in the Statement of Intent only to those persons he deems necessary for compliance with statutory duty (be it function, power, authority, jurisdiction or care) of Fair Work Commission and proper administration of justice.

The application is made for the purpose of providing the opportunity/best possible chances to improve the situation in the Aged Care sector of Australia.

20 In the event of the rejection of this application for confidentiality, **the entire submission is to be published unedited.**

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Igor Grabovsky,
Applicant
Amicus curiae

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LEGAL DISCLAIMER
[related to the Statement of Intent]

A. I, Igor Grabovsky, am making this submission on invitation of Fair Work Commission in regards to [my] application to Fair Work Commission (“**the FWC**”) pursuant to section 603 of the *Fair Work Act 2009* to revoke/vary Decision [2022] FWCFB 77 (“**the Application 603**”).

10 B. I am making this submission in the form of a Statement of Intent (“**the SoI**”) that clearly explains my legal stance in relation to my role in the *Amicus curiae* for matters AM2020/99, AM2021/63 and AM2021/65 (jointly “**the Matters**”) and submission of the *amicus brief*. Without the *amicus brief* it is not possible for Fair Work Commission to comply with the Commonwealth law in the course of dealing with the Matters. The *amicus brief* is based on verifiable evidences, which were obtained in the course of the Dispute (see Part II of the SoI).

C. I am dealing with the Dispute for a period of nine (!) years and I am acting for Inna Mrs. Grabovsky (“**the Injured Worker**”) and for myself.

20 D. In the course of dealing with the Dispute, I have reported, complained or otherwise informed all relevant authorities and officials on all levels of the Commonwealth and the NSW governance about the systematic misconduct of numerous persons (legal and natural).

E. The responsible authorities and officials, who received my information about the systematic misconduct of various offenders, have refused or failed to take proper action, neglecting their statutory duty (be it care, function, authority, power or jurisdiction). Furthermore, on each and every occasion my efforts to protect the course of justice and uphold the law were met with indifference or **resistance** from the responsible authorities and officials.

30 F. My Motion to establish the Royal Commission into Aged Care (“**the RC**”) was one of the triggers that caused the existence of the RC. It was my effort for establishing the evidence of my diligent and lawful conduct.

G. My intentions in relation to the Dispute are stipulated in Part I of the SoI. Until and unless my goals (as per Intention 1, 2 and 3) are fully met I will continue my quest for justice.

H. However, I reserve the right to take any step, I deem necessary in relation to my Intentions 4 and 5, to ensure proper compensation for the Injured Worker and the legal measures for protection of the Aged Care Workers and Recipients.

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I. Due to the utter impotence and incompetence of the Commonwealth and State (NSW) officials and authorities, I became the driving force to propagate the legal actions against the identified offenders; therefore, it is up to me to continue *my* pursuance of the offenders or not.

STATEMENT OF INTENT

Preamble

On the 15 June 2022, I have received an email from the Office of the President of Fair Work Commission (“**the FWC**”) under the name of Mirella Franceschini, the Associate of the President that reads as following:

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OFFICIAL

Dear Mr Grabovsky,

The Commission has received your application under s.603 of the Fair Work Act 2009 for revocation of decision [2022] FWCFB 77.

Should you wish to make any submissions in support of your application, you are directed to file them by close of business on **Friday, 24 June 2022**. After 24 June 2022, the Commission will determine the matter on the material before it.

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Kind Regards,

Mirella Franceschini
Associate to The Hon. Justice Ross AO
President

Two ‘markers’, namely:

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- (i) the absence of the publication* [at the moment of email] of the application pursuant to section 603 of the *Fair Work Act 2009* for revoking and varying the FWC’s decision [2022] FWCFB 77 (“**the Application 603**”) on the FWC website dedicated to the WORK VALUE CASE – AGED CARE, matters AM2020/99, AM2021/63, AM2021/65 (jointly “**the Matters**”); and
- (ii) the *semi-official* manner the direction is made [without formal identification of the matter and without publishing it on the FWC website dedicated to the Work Value Case – Aged Care],

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indicated to me that my effort to move the FWC to act in compliance with the law through the instrument of an additional written submission would be futile.

* The exemptions for publication requirements set in sec. 601 of the *Fair Work Act 2009* are not applicable to the Application 603. This document should be published in the location (FWC website dedicated to the Work Value Case) where it is reasonable to expect any interested reader will look for any additional information/updates.

However, after careful consideration, I have decided to invest my health and time into writing a submission for three reasons:

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THE FIRST REASON is the opportunity, however remote, to move the FWC to act in compliance with the law. It could lead to the resolution of the protracted conflict

originated in 2014 with matter C2014/3313 (“**the Dispute**”), finally providing justice for Inna Mrs. Grabovsky. I will pursue this matter until the outcome is reached in full compliance with procedural, juristic and judicial norms.

THE SECOND REASON is the opportunity to move the FWC to act in compliance with the law. It will lead to changes in the Aged Care sector* (changes to working arrangement for the Care Service Employees in particular).

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* The changes are based on existing statutory instruments and verifiable evidences of systematic malpractice that were never addressed by the Royal Commission into Aged Care Quality and Safety and information, which no participant in the Matters is able or willing to provide.

This opportunity is not so remote as the First one, because it concerns not one worker, but a very large number of people (the aged care workers, aged care recipients and their relatives) and conduct of the various offenders will eventually become evident to the Australian public at large in a form and shape that will warrant application of the punitive measures *regardless* of the age and working status of the offender.

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THE THIRD REASON is to maintain the sense of righteousness. To continue my fight for justice I have to escalate the conflict to the next level; my conciseness must be clear that I have made (and documented) a reasonable effort to show to my opponents the necessity and inevitability of the escalation that will lead to a change of *the price* and *the very form* of the sought relief.

My approach is simple: **what was a suitable instrument of settlement yesterday is not going to work today and the lost opportunity today will not be repeated** [in the same form] **tomorrow** – *there is a price for everything and it is not always expressed in monetary form.*

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The first two reasons are my goals; the third reason is rather an instrument for reaching those goals.

PART I *My intentions*

1.1 FIRST INTENTION: to use all instruments and methods I deem necessary for achieving my goals in regards to the Dispute and to strive for desired results for as long as it takes.

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1.2 SECOND INTENTION: to secure monetary compensation for Inna Grabovsky (“**the Injured Worker**”) to fully compensate her for all damages and losses caused by the persons (whether legal or natural), who caused the Dispute and/or who failed to act in compliance with the applicable law in the course of the Dispute.

1.3 THIRD INTENTION: to secure application of legal measures that would warrant an

unavoidable compliance with legal norms to protect the Aged Care Workers from exploitation and defrauding and protect the Aged Care Recipients from the harm caused by unscrupulous elements of the Aged Care sector.

1.4 **FOURTH INTENTION:** to secure monetary compensation for Igor Grabovsky to fully compensate him [me] for all damages and losses caused by the persons (whether legal or natural), who failed to act in compliance with the applicable law in the course of the Dispute. Due to a large number of offenders, the lawsuits are to be originated against the Commonwealth and the State of NSW, with the further possibility of the isolation of a particular offender(s) for a separate process.

1.5 **FIFTH INTENTION:** to act as a private prosecutor against people whose conduct, in the course of dealing with the Dispute, warrants application of punitive measures.

PART II *What is the Dispute?*

2.1 Back in 2014, Inna Grabovsky (“**the Injured Worker**”) applied to the FWC to resolve a dispute with her employer – United Protestant Association NSW Limited (“**the UPA**”), originating matter **C2014/3313**.

2.2 Matter C2014/3313 had been dealt with by the FWC in numerous and severe breaches of the juristic, procedural and judicial norms. Decisions [2014] FWC 5634 and [2015] FWC 2504, produced for C2014/3313, are erroneous and both decisions have been continuously used by various persons for **massive exploitation and defrauding of the aged care workers**.

PART III *Relevance of the Dispute to the Application 603 and the Work Value Case*

3.1 The *Application 603* concerns the FWC decision to dismiss an application of Igor Grabovsky to act as the *Amicus curiae* to produce the *amicus brief* for the Matters.

3.2 The *amicus brief* contains information of *direct* relevance to the issues in the Work Value Case that is *crucial for the administration of justice* and which *no other participant in the proceeding is willing or able to provide*.

3.3 The *amicus brief* is based on verifiable evidences, which were obtained in the course of the Dispute.

3.4 The MAIN reason that precludes any of the participants in the Matters, the FWC in particular, from raising the issues that were raised in the Dispute, and which are absolutely essential for bringing the workplace issues in the Aged Care sector in full compliance with the applicable law, is that it will be an **act of self-incrimination for the FWC** (and other participants).

3.5 Without the *amicus brief* it is not possible for Fair Work Commission to comply with the Commonwealth law in the course of dealing with the Matters!

It is not an opinion – it is a fact that is evident on the face of the *amicus brief*!

PART IV *Is there a solution?*

- 10 4.1 **Yes, there is.** The outline of a solution appears as the following:
- (i) the FWC, to invite Igor Grabovsky to act as the *Amicus curiae* and submit the *amicus brief*;
 - (ii) Igor Grabovsky, to accept invitation to produce the *amicus brief*;
 - (iii) Igor Grabovsky, to file (3x) applications pursuant to sec. 603 of the *Fair Work Act 2009* for decision [2019] **FWCFB 7296** in matter C2019/3120, for decision [2014] **FWCFB 7533** in matter C2014/6273 and [2015] **FWCFB 3926** in matter
20 C2015/3729;
 - (iv) the FWC, to make determination of applications 603 for decision [2019] **FWCFB 7296** in matter C2019/3120, [2014] **FWCFB 7533** in matter C2014/6273 and [2015] **FWCFB 3926** in matter C2015/3729;
 - (v) Igor Grabovsky, to submit the *amicus brief*;
 - (vi) the FWC and all parties involved in the Matters, to fulfill their obligations in
30 accordance with the Directions to ensure application of the principles of *natural justice* for all people to be effected by the outcome in the Work Value Case – Aged Care;
 - (vii) the FWC, to make determination of the Matters.

4.2 To prevent any misinterpretation and/or misunderstanding of my suggestion, I provide some basic clarification for each point of the above-suggested solution.

4.3 **Clarification of Point (i)** – the FWC, to invite Igor Grabovsky to act as the *Amicus curiae* and submit the *amicus brief*.

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4.3.1 The FWC grants Application 603 and changes its Decision [2022] FWCFB 77 by revoking/setting it aside;

4.3.2 The FWC issues a formal Direction inviting submission of the *amicus brief*. The terms are to be stipulated in the [varied] Decision and the corresponding Directions.

4.4 **Clarification of Point (ii)** – Igor Grabovsky, to accept invitation to submit the *amicus brief*

4.4.1 As soon as all conditions/terms are agreed upon, I will submit a formal undertaking for producing the *amicus brief*.

4.4.2 It will take **thirteen weeks** from the date of the acceptance to produce the *brief*. I've already started the writing, but my health does not allow me to work as before; therefore, the 13-week period will be a safe term for finishing the *brief*. Also, there are three “sec. 603 applications” for me to prepare (see the next Point).

4.5 **Clarification of Point (iii)** – Igor Grabovsky, to file (3x) applications pursuant to sec. 603 of the *Fair Work Act 2009* for decision **[2019] FWCFB 7296** in matter C2019/3120, for decision **[2014] FWCFB 7533** in matter C2014/6273 and **[2015] FWCFB 3926** in matter C2015/3729.

4.5.1 For the FWC and for any other participant in the Matters, no exception, the above-mentioned decisions [in their current forms] constitute the insurmountable barrier for an acceptance of the *amicus brief* because any recognition of the problems identified in the *amicus brief*, or any attempt to fix the problems using methods suggested in the *brief*, will be an act of self-incrimination [for the erroneous nature of those decisions].

4.5.2 Decisions **[2019] FWCFB 7296**, **[2014] FWCFB 7533** and **[2015] FWCFB 3926** are the refusal to permit an appeal(s) of the original decisions for matters C2014/3313 and C2018/685, where decisions are made in brazen and *obvious* violation of all legal norms.

4.5.3 The issues raised in matters C2014/3313 and C2018/685 are *essential* and *unavoidable* elements of a legal process for any workplace determination, let alone, for such an important and comprehensive matter as the **WORK VALUE CASE – AGED CARE**.

4.5.4 Correction of the outcomes for matter C2014/3313 is paramount for a settlement of the Dispute. Correction of the outcome cannot proceed without correction of the outcome in matter C2018/685 for reinstatement of the Injured Worker as a party to proceeding.

4.5.5 The correction of outcomes for C2014/3313 and C2018/685 **will allow correction** of errors and the settlement of the Dispute **within the same jurisdiction, where those errors were made**.

4.5.6 Without bringing the outcomes in matters C2014/3313 and C2018/685 with full compliance with the law, the FWC will not be able to invite the production of the *amicus brief* and arrive to the legitimate outcome in the Matters.

4.5.7 No tribunal may (means *permitted*) change a decision without due process.

Section 603 of the *Fair Work Act 2009* is not a subject to a *prescriptive period* (Statute of Limitations), and its application to decisions [2019] FWCFB 7296, [2014] FWCFB 7533 and [2015] FWCFB 3926 will provide a legitimate way to correct the original decisions in matters C2014/3313 and C2018/685 by permitting an appeal in matters in C2019/3120, C2014/6273 and C2015/3729.

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4.5.8 The process of appeal(s) will allow the **original offender** (the UPA) to participate* in a proceeding(s) and present its legal stance** on the subjects of appeal in accordance with the principle of natural justice.

* I will not object the UPA participation in the appeals.

** I will not object the UPA representation by a legal practitioner for as long as the *Certificate(s) of a reasonable prospect of success based on provable grounds and point of law* is/are duly executed by all legal practitioners representing the UPA. Otherwise, the MD/CEO or the Officer/Director of the Board – the UPA is a public company – must act for and on behalf of the UPA in compliance with sec. 596 of the *Fair Work Act 2009*.

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IMPORTANT! I will accept an “invitation” to submit the *amicus brief* even without the appeals of the decisions for C2014/3313 and C2018/685 – simply the **content of the *amicus brief* will cover more topics.**

No matter how remote the possibility of the application of the punitive measures seems right now to any potential defendant, the Damocles Sword of punishment is there *indefinitely* and no one knows (including myself) when it is going to be ‘released’!*

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* It is not an intimidation – it is my intention that I declared in this Statement

The question is: would the FWC invite and accept the *amicus brief* being aware of the impending legal proceedings if the Dispute is not settled?

Refusal of the *amicus brief* in the jurisdiction of the FWC will not help the Work Value Case.

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Correction of the decisions for matters C2014/3313 and C2018/685 through the appeal process in matters C2019/3120, C2014/6273 and C2015/3729 will pave the way for a settlement for the Injured Worker, will provide piece of mind for many people who are involved in the Dispute and will free the FWC to do the right things to the Aged Care Workers that otherwise are not likely to happen.

Should this proposed approach be adopted I will reconsider my Intentions №4 and №5 towards the participants in the Matters.

4.6 **Clarification of Point (iv)** – the FWC is to make determination of applications pursuant to sec. 603 of the *Fair Work Act 2009* for decision [2019] FWCFB 7296 in matter C2019/3120, decision [2014] FWCFB 7533 in matter C2014/6273 and [2015] FWCFB 3926 in matter C2015/3729

4.6.1 Due to the fact that no appeal was permitted in any of the identified matters, *there were no appeals by definition*.*.

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An appeal cannot take place if permission to appeal is not given.

* I am familiar with the FWC view on this issue, but this Statement is to find a solution, not more grounds for a disagreement. In any event it is a question of law, but for prompt decision on the further course of action, the Matters and Dispute have to be decided in the jurisdiction of the FWC.

4.6.2 The main ground for the permission(s) to appeal was *public interest*. This ground was dismissed by the FWC on every single occasion in the course of the Dispute, but the findings of the Royal Commission and the very fact of establishing of the Royal Commission into Aged Care Quality and Safety, contradicts the FWC legal position (I hope, *former* legal position). I'd suggest to consider this fact *seriously*.

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4.6.3 Decision(s) about revocation of decisions [2019] FWCFB 7296, [2014] FWCFB 7533 and [2015] FWCFB 3926 have to be made *prior* to the submission of the *brief*.

4.6.4 The actual appeals of decisions for matters C2014/3313 and C2018/685 to take place in an independent from the Work Value Case – Aged Care mode.

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4.7 **Clarification of Point (v)** – Igor Grabovsky, to submit the *amicus brief*.

4.7.1 The point is self-explanatory.

4.8 **Clarification of Point (vi)** – the FWC and all parties involved in the Matters, to fulfill their obligations in accordance with the Directions to ensure application of the principles of *natural justice* for all people to be effected by the outcome in the Work Value Case – Aged Care.

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4.8.1 The FWC Directions should ensure distribution of the *amicus brief* among all intended, relevant or/and interested persons, especially among the Aged Care Workers of all categories (registered and supportive personnel), who are non-Members of any Union and whose interests are not sufficiently represented or protected in the Matters.

4.8.2 The Unions (for the Workers) and the peak bodies (for the Employers) must be obligated by the FWC Directions to inform each and every worker about the existence of the *amicus brief* and to provide an easy access to its content.

4.8.3 The FWC must ensure the *amicus brief* to be distributed among the government structures relevant to the Aged Care, the Health Care, the Education and Training, the Attorney-General Dept/AGS, the Treasury and the PM for their consideration and action.

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4.9 **Clarification of Point (vii)** – the FWC, to make determination of the Matters.

4.9.1 This point **is not** self-explanatory.

4.9.2 Should the *amicus brief* be distributed/broadcasted as described in the Point (vi) above, it must be deemed that the FWC has fulfilled its obligations under sections 577 and 578 of the *Fair Work Act 2009* in providing the procedural fairness and transparency for the parties and participants in the Matters to collaborate with the FWC on arriving to a just, fair and legally sound decision, that is almost impossible without the *amicus brief*.

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4.9.3 It is impossible to establish exactly what will be the “correct decision” at his point in time, but I can confidently state, if the course of determination of the Matters will take the shape suggested in the *amicus brief*, then:

(i) all parties to the Matters will revise their goals and approaches to the issues in the Aged Care sector and their applications will be heavily amended;

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(ii) the FWC and the Government will be given a powerful [practical] tool based on the **objective criteria** for **immediate** navigation of the process of the improvement of the Aged Care sector, that would prevent many conflicts and disputes between the [historically] opposing forces;

(iii) the Workers will benefit from the *amicus brief* in a way that they are not currently envisioning;

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(iv) the Employers will be given a fair and practical tool that would warrant employment of the adequate (by competence and by quantity) workforce and preclude unnecessary, and in many cases excessive, reporting;

(v) the [parts of the] *amicus brief* is/are likely to be used by the FWC (and other tribunals) for dealing with other matters.

4.10 The proposed course of action provides the opportunity to settle a long running Dispute and to use all aspects of this unfortunate event (the Dispute) for the good of Australia.

CONCLUSION:

I expressed myself as bluntly as possible under the circumstances.

This is the opportune moment!

10 Dated this 23rd day of June, 2022.

Igor Grabovsky,

Amicus curiae

Proud Australian Citizen