

**From:** Alana Rafter <Alana.Rafter@ablawyers.com.au>  
**Sent:** Friday, January 19, 2024 4:38 PM  
**To:** Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>  
**Cc:** Nigel Ward <Nigel.Ward@ablawyers.com.au>; Penelope Parker <PParker@mauriceblackburn.com.au>; Mia Pantechis <MPantechis@mauriceblackburn.com.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; Ben Redford(unitedworkers) <Ben.Redford@unitedworkers.org.au>; Besemeres, Clare <Clare.Besemeres@ags.gov.au>; Vermeesch, Paul <Paul.Vermeesch@ags.gov.au>; Philip Gardner <pgardner@gordonlegal.com.au>; Nick White <nwhite@gordonlegal.com.au>  
**Subject:** RE: Disclosure - Expert Panel Member Advisory Role Opportunity - AM2020/99 & Ors – Aged Care Work Value Case

OFFICIAL

Dear Associate,

We refer to the “*Expert Panel Member Advisory Role Opportunity*” for Professor Marian Baird communicated to the parties and representatives by the Chambers of President Hatcher on Monday, 15 January 2024 (**the disclosure**).

The nature of the disclosure was set out within that communication, together with the following direction:

*“Any party which considers that acceptance of this advisory role would disqualify Professor Baird from further participation in the Expert Panel constituted in these matters is directed to advise the chambers of Justice Hatcher of its position in this respect by 5:00 pm (AEDT) on Friday, 19 January 2024”.*

The position of the Joint Employers is set out below.

### **Joint Employers’ Response**

In the context of the current proceedings, the Joint Employers do not consider the acceptance of the advisory role would disqualify Professor Baird from further participation in the Expert Panel as constituted for this matter.

In forming that view, we note the following:

1. Some initial reservations may arise due to the possible appearance or apprehension of bias arising from a current member of the Expert Panel in the Work Value Case giving advice ostensibly to an Applicant in the proceedings, namely, the HSU. However, having regard to the projected timing of the appointment and noting that judgment is reserved in the Work Value Case, materialisation of any reservations likely fall away as a consequence of timing.
2. Looking forward, acceptance of the appointment may increase the appearance or apprehension of bias in future matters before Professor Baird that relate to the care and community sector (e.g. an application in relation to the disability sector) but that is

a matter to be considered at that time and does not alter the position of the Joint Employers stated above in this matter.

Yours faithfully,

Alana

**Alana Rafter**  
Senior Associate  
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**From:** Chambers - Hatcher J <[Chambers.Hatcher.J@fwc.gov.au](mailto:Chambers.Hatcher.J@fwc.gov.au)>

**Sent:** 15/01/2024 9:39 AM

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**Subject:** Disclosure - Expert Panel Member Advisory Role Opportunity - AM2020/99 & Ors – Aged Care Work Value Case

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Dear parties and representatives,

On Friday, 12 January 2024, Professor Marian Baird, a member of the Expert Panel constituted to determine the above matters, informed Justice Hatcher of an invitation she has received to work on a project to be conducted by the Health and Community Services Union (HACSU) Victoria, a branch of the HSU.

The HACSU represents workers in mental health, disability, and drug and alcohol services across Victoria and has won a grant from WorkSafe's WorkWell Respect Fund to develop and evaluate policies and practices for the prevention and early intervention of gendered and sexual harassment for frontline healthcare workers. More information on the grant can be found [here](#).

Professor Baird's role would be to provide academic advice, thought leadership and evaluation of the work HACSU is to do. The University of Sydney, which employs Professor Baird, is to receive \$30,000 per year for two years (2024–5) into a nominated research account as funding for the cost of participation in this project. Professor Baird will not be receiving any personal funds from this engagement.

Any party which considers that acceptance of this advisory role would disqualify Professor Baird from further participation in the Expert Panel constituted in these matters is directed to advise the chambers of Justice Hatcher of its position in this respect by **5:00 pm (AEDT) on Friday, 19 January 2024**.

Kind regards,

**Mahmoud Al Rifai**  
**Associate to Justice Hatcher, President**



**Fair Work Commission**

Australia's national workplace relations tribunal

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The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

**This email was sent from Gadigal Country.**