

IN THE FAIR WORK COMMISSION

Matter(s) No(s):

AM2020/99, AM2021/63, AM2021/65 –

WORK VALUE CASE – AGED CARE

**Application to correct obvious errors in relation
to Decision [2022] FWCFB 118**

10 Applicant/*Amicus curiae*:

Igor Grabovsky

PUBLICATION OF THIS APPLICATION BY THE FWC IS MANDATORY

DOCUMENTS SUBMITTED

1. **Application pursuant to section 602 of the *Fair Work Act 2009* to correct errors in
Decision [2022] FWCFB 118.**
2. **Attachment 1 – copy of Decision [2022] FWCFB 118**
3. **Attachment 2 – draft of corrected Decision [2022] FWCFB 118**

Dated 07 August 2022

Filed by Igor Grabovsky

Applicant

Amicus curiae

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TEXT ONLY

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FAIR WORK COMMISSION'S DECISION [2022] FWCFB 118

This application (“**the Application 602/2**”) is made under section 602 of the *Fair Work Act 2009*.

The Applicant/*Amicus curiae* applies to **correct erroneous information, including any error made by the way of omission of relevant information**, that had been used for arriving to decision [2022] FWCFB 118 (“**the Decision-2**”).

- 10 Decision [2022] FWCFB 118, in its current form, is a *misleading and fraudulent document* that is *detrimental to the course of justice*. This *Application 602/2* is designed to correct the errors contained in the *Decision-2*.

Section 602 of the *Fair Work Act 2009* provides for correction of the *obvious errors*.

The *obvious error* is the mistake that is easily perceived or understood and is self-evident or apparent on the face of evidence, fact or law. The *obvious errors* are free from subjective influence and therefore, are *objectively recognisable*.

- 20 The Applicant is using this legal avenue (sec. 602) to provide the FWC, as constituted for matters AM2020/99, AM2021/63, AM2021/65 (jointly “**the Matters**”), who is responsible for the *Decision-2*, with the opportunity to correct those errors.

The obvious errors exposed by the Applicant/*Amicus curiae* in this *Application 602/2* are *objectively recognisable*; therefore, no judicial (arbitrating) officer has discretionary power to ignore them.

- 30 The Applicant/*Amicus curiae* **does not apply for correction of the Decision-2** made by Fair Work Commission (“**the FWC**”). **All conclusions, made by the FWC’s Full Bench, must be** left as they currently appear in the *Decision-2* regardless of their accuracy and legitimacy.

The *Application 602/2* **is designed** to expose the errors made by the FWC due to omission, misuse and misinterpretation of the submissions, and the errors made because of the lack of due regard to the facts and applicable laws.

The *Application 602/2* **is designed** to expose the fraudulent nature of the *Decision-2* showing the obvious conflict between information provided by the Applicant/*Amicus curiae* and the conclusions made by the FWC.

- 40 The *Application 602/2* **is designed** to correct the errors contained in the *Decision-2* to prevent circulation of the fraudulent official instrument (Decision [2022] FWCFB 118) within the judicial system in Australia and to be used as an “authority” in other matters because in its current form, the *Decision-2* is an *instrument of crime* that will inflict harm upon people.

The fraudulent nature and absurdity of the *Decision-2* are obvious in its (the Decision’s) corrected form.

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The FWC’s refusal to correct errors will provide an *additional* proof that errors are the result of deliberate action of the FWC for the purpose of perverting the course of justice and concealment of serious offences, shielding the offenders from investigation and prosecution.

In this Application:

- 10 Fair Work Commission - **the FWC**
- Mr. Igor Grabovsky - **the Applicant or the Amicus curiae or the Appellant**
- The Application of the *Amicus curiae* made on the 08 May 2022 **the Application**
- Decision [2022] FWCFB 77 made on the 19 May 2022 (on the *Application*) **the Decision-1**
- 20 The Application pursuant to sec. 603 of the *Fair Work Act 2009* made on the 01 June 2022 to review/amend the *Decision 1* **the Application 603**
- The Statement of Intent, a submission made by the Applicant/*Amicus curiae* on the 23 June 2022 on invitation of the FWC **Statement of Intent (“the CoI”)**
- 30 The Application to treat the CoI as *confidential* pursuant to sec. 594 of the *Fair Work Act 2009* made on the 23 June 2022 **the Confidentiality Application 594 (“the CA-594”)**
- Decision [2022] FWCFB 118 made on the 04 July 2022 (on the *Application 603*) **the Decision-2**
- Request for Information/Request to make a Decision on the CA made on the 07 July 2022 **the Request-1**
- 40 [This] Application pursuant to sec. 602 of the *Fair Work Act 2009* made on the 05 August 2022 to correct errors in the *Decision-2* **the Application 602/2**

PART I *Technical information*

- 1.1 An error or group of errors are dealt with under separate sections identified as **Section 1**, **Section 2**, etc.
- 1.2 The Applicant prints an extract from the Decision in *Calibri font* to identify text (location within the Decision) where an error is and identifies the error (location within the extract) with **highlighting**.
- 1.3 **Bold text**, *italic font* and underlining are also used to emphasise importance/accent.
- 1.4 The Applicant identifies the error (the essence of the mistake) under sub-sections “Error”.
- 1.5 The Applicant provides correction of the errors under sub-section “Correction”.

PART II *The errors*

The following pages address obvious errors in the following paragraphs of the Decision:

Section 1	page 05	for paragraph [1] (of the Decision)
Section 2	page 07	for paragraph [2]
Section 3	page 08	for paragraph [3]
Section 4	page 11	for paragraph [4]
Section 5	page 12	for paragraph [5]
Section 6	page 13	for paragraph [6]
Section 7	page 14	for paragraph [7]
Section 8	page 17	for paragraph [8] and [9]
Section 9	page 18	for paragraph [10]
Section 10	page 20	for paragraph [11]
Section 11	page 26	for paragraph [12]
Section 12	page 28	for paragraph [13]
Section 13	page 29	Deceptive methods used by the FWC for hiding the fraudulent nature of the official instruments created by the FWC Members.

Following page 5 addresses the errors in **Section 1**.

2.1 **Section 1** Paragraph [1] (of the Decision) states:

[1] On 8 May 2022, in what he described as the role of *amicus curiae*, Mr Grabovsky made an application in the Aged Care Work Value Case seeking a direction under s.590(2)(b)1 of the Fair Work Act 2009 (the Act) for:

- him to submit an 'amicus brief' by 2 August 2022,

10 - the applicants in matters AM2020/99, AM2021/63 and AM2021/65 to distribute copies of the 'amicus brief' among 'Aged Care Workers, Members and non-Members of the corresponding unions' within 30 days, and

- the Commonwealth to distribute the 'amicus brief' among 'government structures responsible for the Health and Aged Care' by 30 August 2022.

Error:

20 2.1.1 The statement in paragraph [1] is not false, but misleading due to omission of all information vital for the understanding of:

- (i) the grounds of the *Amicus curiae Application*;
- (ii) the legal strength of the grounds, upon which the *Application* was made;
- (iii) the circumstances that led to the *Application (Amicus Curiae)*;
- (iv) an unavoidable necessity for the *amicus brief* due to the public interest in information contained within.

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2.1.2 Paragraph [1] is the only paragraph within the *Decision-2* that deals/mentions the *Application* submitted by the Applicant/*Amicus curiae*. The FWC provides no information in paragraph [1] of the *Decision-2* that would allow any *interested/intended reader* to establish the accuracy and legitimacy of the conclusion made by the FWC in paragraph [2] of the *Decision-2* without a substantial research.

2.1.3 The statement in paragraph [1] is not self-explanatory.

40 2.1.4 The FWC provides no information in paragraph [1] of the *Decision-2* (or anywhere else) that would allow any *interested/intended reader* to establish why the production of the *amicus brief* would not serve public interest and why the information contained within the *amicus brief* would not serve the course of justice.

2.1.5 The FWC provides no information in paragraph [1] of the *Decision-2* (or anywhere else) that would allow any *interested/intended reader* to establish how and if the conclusion, made by

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the FWC in paragraph [2] of the same *Decision-2*, would serve public interest and assist the FWC in administration of justice.

The error is obvious on the face of the *Amicus curiae Application* and *Decision-2*.

Correction:

10 2.1.6 For correction of the Errors 2.1.1 – 2.1.5, the FWC must provide relevant information in quantity and quality that clearly indentifies:

- (i) the grounds of the *Amicus curiae Application*;
- (ii) the legal strength of the grounds, upon which the *Application* was made;
- (iii) the circumstances that led to the *Application (Amicus Curiae)*;
- (iv) public interest in information contained within the *amicus brief*.

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2.1.7 The corrected version of paragraph [1] of the *Decision-2* must reflect the true facts and should appear as shown in the paragraph [1] of the Attachment 2 – **Draft of the corrected Decision 2.**

Following **Section 2** on page 7 addresses the next error.

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2.2 **Section 2** Paragraph [2] states:

[2] In a decision published on 19 May 2022 (the Decision) we dismissed Mr Grabovsky's application on the basis that 'the brief would be unlikely to be of any assistance and accepting it would unnecessarily delay proceedings.'

Error:

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2.2.1 The statement in para [2] is not false, but misleading due to omission of information vital for the understanding on which grounds the FWC did dismiss the *Amicus curiae Application*.

Stipulation that the FWC dismissed the Application because '...the brief would be unlikely to be of any assistance and accepting it would unnecessarily delay proceedings' **is not** a ground, but a conclusion.

2.2.2 There is no information about the *Application* (as stated in Section 1 above) that would allow any *interested/intended reader* to establish:

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- (i) did the FWC consider any ground of the *Application* at all?
- (ii) if the FWC did consider the grounds of the *Application* then how?
- (iii) why did the FWC arrive to a decision, which declares that release and consideration of information to be provided in the *amicus brief* (as indicated in the *Summary of the amicus brief*) is not in public interest and will not assist the FWC?
- (iv) why did the FWC arrive to a decision, which declares that release and consideration of information to be provided in the *amicus brief* (as indicated in the *Summary of the amicus brief*) will delay the proceedings (the Matters)?
- (v) do the FWC conclusions on each and every ground of the *Application* coincide with the applicable law and the purpose(s) of the *Matters*?
- (vi) who is/are **willing and able** to furnish the FWC with information identified in the *Summary of the amicus brief*?
- (vii) if there is a person, apart from the *Amicus curiae*, who is **willing and able** to provide information equivalent to the *amicus brief*, then why has such information not been provided to the FWC by the participants in the Matters?

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The error is obvious on the face of the *Amicus curiae Application*, the *Decision-1*, the *Application 603*, the *CoI* and *Decision-2*.

Correction:

2.2.3 For correction of the Errors 2.1.1 and 2.2.2, the FWC must provide relevant information that fully addresses the issues indentified in paragraph 2.2.2 (i) – (vii) above in addition to the *corrected* paragraph [1].

2.2.4 The corrected version of para [2] of the *Decision-2* must reflect the true facts and should appear as shown in the paragraph [2] of Attachment 2 – **Draft of the corrected Decision 2.**

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Following **Section 3** on page 9 addresses the next error.

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2.3 **Section 3** Paragraph [3] states:

[3] Mr Grabovsky has now lodged an application pursuant to s.603 of the Act seeking that the Commission revoke the Decision and issue a direction in similar terms to those set out at [1] above (the 'review application').

Error:

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2.3.1 The statement in paragraph [3] is not false, but misleading due to omission of all information vital for the understanding of:

- (i) the grounds of the *Application 603*;
- (ii) the legal strength of the grounds, upon which the *Application 603* was made;
- (iii) the circumstances that led to the *Application (Amicus Curiae)*;
- (iv) an unavoidable necessity for correction of the *Decision-2*;
- (v) the importance of the *amicus brief* for serving justice due to the public interest in information contained within that **no other participant in the Matters is able or willing to provide.**

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2.3.2 Paragraph [3] is the only paragraph within the *Decision-2* that deals/mentions the *Application 603* submitted by the Applicant/*Amicus curiae*. The FWC provides no information in paragraph [3] of the *Decision-2* that would allow any *interested/intended reader* to establish the accuracy and legitimacy of the conclusion made by the FWC in paragraph [6] of the same *Decision-2*.

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2.3.3 The FWC provides no information in paragraph [3] of the *Decision-2* (or anywhere else) that would allow any *interested/intended reader* to establish how and if the conclusion, made by the FWC in paragraph [6] of the same *Decision-2*, would serve public interest and assist the FWC in administration of justice.

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2.3.4 The FWC provides no information in paragraph [3] of the *Decision-2* (or anywhere else) that would allow any *interested/intended reader* to establish why the *Application 603* (correction of the *Decision-1*) would not serve public interest and why the correction of the *Decision-1* would not serve the course of justice.

2.3.5 The statement in paragraph [3] is not self-explanatory.

The error is obvious on the face of the *Amicus curiae Application*, the *Application 603*, the *Decision-1* and *Decision-2*.

Correction:

2.3.6 For correction of the Errors 2.3.1 – 2.3.5, the FWC must provide relevant information in quantity and quality that clearly indentifies:

- (i) the grounds of the *Application 603*;
- (ii) the legal strength of the grounds, upon which the *Application 603* was made;
- (iii) public interest for correction of the *Decision-2* as stipulated by the Applicant/*Amicus curiae*.

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2.3.7 The corrected version of paragraph [3] of the *Decision 2* must reflect the true facts and should appear as shown in the paragraph [3] of the Attachment 2 – **Draft of the corrected Decision 2.**

Following **Section 4** on page 11 addresses the next error.

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2.4 **Section 4** Paragraph [4] states:

[4] **The discretionary power in s.603(1), to vary or revoke a decision, has a broad and flexible operation; it is not cast in terms of a power to be exercised only in particular stated events or circumstances.**

Error:

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2.4.1 The statement in para [4] is false and misleading.

2.4.2 The statement in para [4] is incompetent and erroneous on a point of law.

Detailed information is provided in section 13 *Deceptive methods used by the FWC for hiding the fraudulent nature of the official instruments created by the FWC Members* further in this *Application 602/2*.

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Correction:

2.4.3 Statement in para [4] must be removed from the *Decision-2* due to its erroneous and fraudulent nature.

Following **Section 5** on page 12 addresses the next error.

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2.5 **Section 5** Paragraph [5] states:

[5] Mr Grabovsky was provided with the opportunity to file submissions in support of the review application and lodged submissions in the form of a 'Statement of Intent'.

Error:

10 2.5.1 The statement in paragraph [5] is not false, but misleading due to omission of information contained in the *Application 603* vital for the understanding of the essence of the Statement of Intent (“**the SoI**”) and how the *SoI* compliments the *Application 603* to which it relates.

2.5.2 Paragraph [5] is the only paragraph within the *Decision-2* that deals/mentions the *SoI* submitted by the Applicant/*Amicus curiae* in support to the *Application 603*. The FWC provides no information in paragraph [5] of the *Decision-2* that would allow any *interested/intended reader*:

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- (i) to establish the accuracy and legitimacy of the conclusion made by the FWC in paragraph [6] of the same Decision in relation to the *SoI*;
 - (ii) to establish how and if the conclusion, made by the FWC in paragraph [6] of the same Decision, would serve public interest.
 - (iii) to establish how and if information provided by the Applicant/*Amicus curiae* within the *SoI* would serve public interest.

The error is obvious on the face of the *Amicus curiae Application*, the *Application 603*, the *CoI*, the *Decision-1* and *Decision-2*.

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Correction:

2.5.3 For correction of the Errors 2.5.1 and 2.5.2, the FWC must:

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- (i) provide relevant information as stipulated in Sections 1, 2, and 3 of this *Application 602/2*;
 - (ii) remove false and misleading information stated in paragraph [4] of the *Decision-2*;
- and
- (iii) provide information on the essence of the ***CoI*** and how it will serve public interest and the administration of justice.

2.6.4 The corrected version of paragraph [6] of the *Decision-2* must reflect the true facts and should appear as shown in the paragraph [6] of the Attachment 2 – **Draft of the corrected Decision 2**.

Following **Section 6** on page 13 addresses the next error.

2.6 **Section 6** Paragraphs [6] state:

[6] There is nothing in Mr Grabovsky's submissions that persuades us to conclude that the Decision should be reviewed.

Error:

10 2.6.1 The statement in paragraph [6] is false and misleading in material particulars in context of the *Decision-2* in its current form.

2.6.2 The statement stipulates that the FWC had made its conclusion based on submissions made by the Applicant/*Amicus curiae*, but the FWC purportedly omitted information about the essence of the submissions preventing any *interested/intended reader* to see the fraudulent nature of the FWC's conclusion.

No *interested/intended reader* can establish the legitimacy and accuracy of the statement in paragraph [6] due to absence of information, which was purportedly omitted from the *Decision-2*.

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The error is obvious on the face of the *Amicus curiae Application*, the *Application 603*, the *CoI*, the *Decision-1* and *Decision-2*.

Correction:

2.6.3 The statement in paragraph [6] of the *Decision-2* constitutes the FWC's conclusion; therefore, in the corrected decision, wording of this statement must remain as it currently is.

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2.6.4 For correction of the Error 2.6.1, the FWC must provide correct and relevant information as stipulated in Sections 1, 2, 3, 5 of this *Application 602/2*.

2.6.5 The corrected version of paragraph [6] of the *Decision-2* must reflect the true facts and should appear as shown in the paragraph [6] of the Attachment 2 – **Draft of the corrected Decision-2**.

Following **Section 7** on page 14 addresses the next error.

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2.7 Section 7 Paragraph [7] states:

[7] The Commission has a broad discretion to 'inform itself in relation to any matter before it in such manner as it considers appropriate' (s.590(1) of the Act). Further, s.577 provides that the Commission must perform its functions and exercise its powers quickly, in a manner that is fair and just and avoids unnecessary technicalities, and openly and transparently.

10 Error:

2.7.1 The statement about sec. 590 of the *Fair Work Act 2009* is false and misleading.

This part of paragraph [7] is relevant only to one ground of the *Application 603* to which *Decision-2* relates. But neither the *Decision-1* nor the *Decision-2* did address this ground of disagreement of the Applicant/*Amicus curiae* with the FWC's position.

Sections 3.1 and 3.2 of Part III of the *Application 603* clearly identified the issue that must be addressed by the FWC, namely (citation):

20 ...

3.1 The FWC (in the *Decision-1*) stated:

The Commission has broad discretion to inform itself about matters before it...

3.2 Addressing the error(s) as shown in 3.1:

Section 590(1) of the *Fair Work Act 2009* stipulates that:

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(1) The FWC **may***, except as provided by this Act, inform itself in relation to any matter before it...

* My emphasis

Being a tribunal founded and regulated by the Act of the Parliament, the FWC is the same subject to an applicable statute [law] as any other person. The Acts of the Parliament (statute law) **exclude judicial discretion** because the **very purpose of the existence of the statute law is to free tribunals from subjective influence**.

The expression (word) "may" in context of any provision of any Act of the Parliament (the *Fair Work Act 2009* inclusive) has a meaning of the term "permission". A provision of statute *permits* an umpire to use its power or/and authority **if evidence/fact before a tribunal or other applicable law** warrant such use of power/authority.

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A personal preference is not a criterion for defining "discretion" in application to judicial conduct. **No umpire is permitted to use its discretion that is by any method or in any form or shape renders ineffective the Act of the Parliament or/and perverts the course of justice.**

Any judicial "discretion" must be warranted by applicable statute* and by evidences/facts before a tribunal.

* IT MUST BE NOTED: The list of the Acts of the Parliament applicable in the jurisdiction of the FWC is not limited to the *Fair Work Act 2009*.

50 Judicial conduct that is contrary to evidences and in breach of the Commonwealth law constitutes an abuse of power of a judicial office (in any jurisdiction).

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Section 590 of the *Fair Work Act 2009* **permits** the FWC to inform itself *using a broad range of instruments and mechanisms* (e.g. conferences, hearings, etc.) and not *broad discretion* as stated by the FWC.

The **reading** of the provision [sec. 590] of the *Fair Work Act 2009* in compliance with the *Acts Interpretation Act 1901* and fundamental principles of jurisprudence provide meaning that differs quite considerably from the **interpretation** produced by the FWC in its Decision.

10 The [Members of] FWC **does/do not have** “*discretion*” to decide whether to direct a person to produce a document vital for the proper execution of the functions and powers of a tribunal and administration of justice.

The part of the FWC statement as shown in 3.1, upon which the Decision is made, is:

- (i) **false, misleading;** and
- (ii) **in conflict with the Commonwealth law and fundamental principles of law;** and
- (iii) **constitutes abuse of power of the Office(s) of the FWC Member(s).**

...

The FWC did fail to address this issue.

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2.7.2 The statement in paragraph [7] about section 577 of the same *Act* is false and misleading in material particulars.

While section 577 does indeed direct the FWC to perform its functions and exercise its powers in a manner that:

- (a) *is fair and just;* and
- (b) *is quick, informal and avoids unnecessary technicalities;* and
- (c) *is open and transparent,..*

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the FWC **did fail** to stipulate how the FWC complies with these *mandatory* directions in the Matters.

The FWC had refused to provide any explanation about:

- (aa) *fair and just?!*

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How the rejection of the [production of the] *amicus brief* with information that is vital for the administration of justice, information that no other participant in the Matters is able or willing to produce, could be deemed as a *fair and just* manner of performing a tribunal’s statutory duty (be it power, function, care of authority)?

- (ba) *quick?!*

The first application in relation to the Matters had been filed back in 2020!!! How is the matter, which has been continuing for two years could be deemed as “quick”?

The FWC is implying that the *amicus brief* will “delay” the process for two months

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and will “*ruin the sprinter’s speed*” (sarcasm) of the proceedings!

I won’t be surprised if my submissions will rather speed up the process, forcing the Unions, the Commonwealth and the FWC (as a tribunal) **to come to an agreement of a significant pay increase for the Workers way ahead of a schedule**, just to avoid further scrutiny of their misconduct and misconception of the Unions’ applications exposed in the *amicus brief*.

10 IT MUST BE NOTED: A pay increase alone will not provide a solution, but for some time would shift a focus away from the persons responsible for a crisis.

(bb) *informal and avoids unnecessary technicalities?!*

20 How can the Work Value Case (the Matters), which must be “technical” by definition because it deals with the amendment of three (!) Awards, which regulate one of the largest sectors of the Australian economy, with the involvement of an army of lawyers from each and every side, could be defined as “*informal*” that “*avoids unnecessary technicalities*”?

The FWC is implying that hundreds of submissions presented by the lawyers for the Matters, as they (lawyers) did for the last 20 years in numerous futile attempts to improve the Aged Care sector, constitute “*necessary technicalities*”, while the *amicus brief*, with information that is absolutely essential for the real improvement of the Aged Care sector and which **no other participant in the Work Value Case is able or willing to produce**, must be considered as “*unnecessary technicalities*”!

30 (ca) *open and transparent?!*

How can the rejection of the [production of the] *amicus brief*, which contains **information that no other participant in the Matters is able or willing to produce**, could be deemed as an *open and transparent* manner of performing a tribunal’s statutory duty, if such a manner deprives the only [supposed to be] beneficiaries of the proceedings, the Aged Care Workers, from learning information, preventing them from making informed decisions?

40 **The errors are obvious on the face of the *Amicus curiae Application*, the *Application 603*, the *CoI*, the *Decision-1* and *Decision-2*.**

Correction:

2.7.3 Statements in paragraph [7] must be removed from the *Decision-2* due to their erroneous and fraudulent nature in the context of the *Decision-2*.

Following **Section 8** on page 17 addresses the next error.

2.8 **Section 8** Paragraphs [8] and [9] state:

[8] As mentioned earlier, Mr Grabovsky is seeking to be heard as amicus curiae. **The approach taken by the courts to the hearing of amicus curiae is instructive.**

[9] An amicus curiae is heard if that person 'is willing to offer the Court a submission on law or relevant fact which will assist the Court in a way in which the Court would otherwise not have been assisted'. Courts have adopted a cautious approach to considering applications to be heard by persons who would be amicus curiae lest the efficient operation of the court be prejudiced. Further, as Brennan CJ observed in *Kruger v The Commonwealth*: 'where the Court has parties before it who are willing and able to provide adequate assistance to the Court it is inappropriate to grant the application'.

Error:

2.8.1 There are no legal or factual errors in the wording (!) of paragraphs [8] and [9], but the [highlighted] parts of paragraphs [8] and [9] are **deeply deceptive in the context of the *Decision-2***, because these parts intend to deceive any *interested/intended reader* that conclusions made by the FWC, which consequently resulted in the *Decision-2*, are based on the facts, applicable law and in compliance with the "authority" (legal precedent).

Correction:

2.8.2 The wording of paragraphs [8] and [9] must remain as it is because there are no legal or factual errors in the wording (!) of these paragraphs.

The deceptive manner of the implementation of the doctrine of legal precedents is addressed in Section 13 – *Deceptive methods used by the FWC for hiding the fraudulent nature of the official instruments created by the FWC Members*, later in this *Application 602/2* . The deceptive nature of paragraphs [8] and [9] will be obvious when the accurate information to be presented in the previous sections of the *Decision-2*.

2.8.3 For clear understanding of the accuracy and legitimacy of paragraphs [8] and [9], the FWC must provide a summary (brief information) showing how the Applicant's/*Amicus curiae* submissions complies/contradicts with the legal precedent mentioned by the FWC.

2.8.4 The corrected version of paragraphs [8] and [9] of the *Decision 2* must reflect the true facts and should appear as shown in paragraphs [8] and [9] of the Attachment 2 – **Draft of the corrected Decision 2**.

Following **Section 9** on page 18 addresses the next error.

2.9 **Section 9** Paragraph [10] states:

[10] These observations are apposite in the present circumstances

Error:

10 2.9.1 The statement in paragraph [10] in its current form is false and misleading in material particulars in context to the *Decision-2*.

The statement constitutes the FWC's conclusion, which stipulates that information, presented in the *Application (Amicus curiae)*, is not sufficient to grant the Applicant the right to act as the *Amicus curiae* because the FWC has the parties in the Matters, which are able and willing to produce the same information as proposed by the Applicant/*Amicus curiae*.

20 The statement constitutes the FWC's conclusion, which stipulates that information, presented in the *Application 603* and in the *CoI*, is not sufficient to withdraw and amend the *Decision-1* to refuse the Applicant the right to act as the *Amicus curiae* because the FWC has the parties in the Matters, which are able and willing to produce the same information as proposed by the Applicant/*Amicus curiae*; therefore, the FWC has made a conclusion that the *Decision-1* should not be withdrawn/amended because it was correct in the first place.

2.9.2 In the *Decision-2*, the FWC completely and purposely omitted the fact that **there is no participant (party) before the FWC, who is willing or can produce information equal to the information in the amicus brief. The culture of the mutual guarantees ('close ranks') used for keeping the systematic misconduct of the FWC and the lawyers from public scrutiny is the main reason why the Applicant wishes to act as the Amicus curiae.**

30 Some parties in the Matters do have limited ability to produce a small portion of information similar (not equal) to information contained in the *amicus brief*, but those **parties are not willing** to reveal it because that information will incriminate them (the parties who could reveal the information) in serious offences.

2.9.3 Furthermore, the *amicus brief* provides information that raises questions of the fitness of the FWC as a tribunal, and the members of the Full Bench personally, to perform functions and exercising powers of a tribunal in full compliance with the Commonwealth law, fundamental legal principles and in public interest.

40 2.9.4 Each and every participant in the Matters, including the members of the Full Bench of the FWC as assembled for the Matters, has **conflict of interest** that prevents them from providing information equal to information contained in the *amicus brief* and act in public interest, and in compliance with the Commonwealth law.

The error is obvious on the face of the *Amicus curiae Application*, the *Application 603*, the *CoI*, the *Decision-1* and *Decision-2*.

Correction:

2.9.5 While the statement in para [10] is false and deceptive, it cannot be removed from the *Decision-2* because it is one of the conclusions made by the FWC in the process of arriving to the *Decision-2*.

2.9.6 The fraudulent nature of the *Decision-2* will become obvious when the falsification of the official instrument (decision [2022] FWCFB 118) made by the FWC for the purpose of perverting the course of justice is exposed through the obvious conflict of the decision (the FWC's conclusions) with information presented by the Applicant/*Amicus curiae*.

2.9.7 Another reason for the wording of the paragraph [10] to remain in its current form is the fact that in light of the accurate information (the corrected errors) the sense of the paragraph [10] will become diametrically opposite to its current meaning and **will support the *Amicus curiae*/Applicant's legal stance and [my] Application-603**.

2.9.8 For correction of the Error 2.9.1, the FWC must provide relevant information as stipulated in the previous Sections of this *Application 602/2*.

2.9.9 The corrected version of the paragraph [10] of the *Decision 2* must reflect the true facts and should appear as shown in the paragraph [10] of the Attachment 2 – **Draft of the corrected Decision 2**.

Following **Section 10** on page 20 addresses the next error.

2.10 **Section 10** Paragraph [11] states:

[11a] In the Aged Care Work Value case we are considering whether to vary wage rates for aged care employees in three modern awards. The case is not a wide-ranging examination of working conditions in the aged care sector and nor is it an inquiry into the conduct of employers or unions in the sector.

[11b] The parties appearing in the proceedings are competently represented and those representatives are assisting us in our consideration of the various applications.

[11c] Further, as we observed in our decision of 19 May 2022, Mr Grabovsky's involvement as amicus curiae would be unlikely to assist us and accepting his involvement would unnecessarily delay the proceedings.

[11d] Indeed it appears from Mr Grabovsky's 'Statement of Intent', filed in support of the review application, that one of his objectives in seeking to file an amicus curiae brief is to secure monetary compensation for himself and his wife in respect of a dispute which has already been heard and determined by the Commission. It would be entirely inappropriate to grant Mr Grabovsky's application in such circumstances.

IT MUST BE NOTED: The Paragraph [11] appears in the *Decision-2* as one paragraph. Due to multiple errors and different methods for correcting the errors, I have divided paragraph [11] onto separate blocks for better exposure and understanding of the error(s).

Error(s):

2.10.1 The statement in paragraph [11a] is:

(i) false, misleading and incompetent.

This particular point is one of the grounds of the *Application 603* that had not been addressed by the FWC.

The Applicant/*Amicus curiae* had addressed this point in detiles in the *Application 603*. To show the fraudulent nature of the FWC's statement about "...the Aged Care Work Value case... is not a wide-ranging examination of working conditions", it is sufficient to cite the relevant part of the *Application 603* that was not answered by the FWC:

[a] *The wage is an equivalent of the work expressed in a monetary form.*

The Matters **is not** an application of a single worker or a small group of workers to adjust their personal wages.

The Matters are originated by the applications for varying the Award(s)!!! – **the Award is an instrument that affects each and every worker in a particular sector of the industry** –

IT IS (MUST BE) A WIDE-RANGING EXAMINATION of working conditions!

TO BE USED AS EVIDENCE

It is impossible to establish the fair level of remuneration without the exploration and full understanding of the exact nature of work the workers perform, the working conditions, the workplace relations, the workload, classification and the type of prerequisite skills necessary for performance of certain tasks, the conduct of the employers towards the employees and towards the Commonwealth.

It is sufficient to look at the Witness list, to understand the deceptive nature of the FWC statement in the Decision as shown in 3.11*.

- 10 * IT MUST BE NOTED: The list of witnesses for the Matters is comprised of many dozens of people, who give their opinions on the wide spectrum of issues about the workplace conditions.

This note does not appear in the *Application 603*.

The FWC statement* reveals that the FWC does not understand the essence of the Matters before it and the FWC is oblivious which instrument to use (and how) to ensure the full adherence to the legal norms that will guarantee administration of justice.

- 20 * IT MUST BE NOTED: Means the FWC's Statement about *the Aged Care Work Value case is not ... a wide-ranging examination of working conditions*

This note does not appear in the *Application 603*.

The legal representatives of the various parties are UNABLE OR UNWILLING to press the points of law, facts and conduct, to protect the interest of the Parties to proceedings (Aged Care Workers) by compelling the FWC to determine the Matters in full compliance with the Commonwealth law.

The *amicus brief* will provide assistance for these issues.

30

[b] Also, the conduct of employers, and the unions, and the peak bodies MUST BE examined for the purposes of understanding *the necessity for changes (of the Awards) and the nature and the extent of changes* as it is declared in the originating applications.

The Unions are representing their Members. In these particular Matters, the Unions have a *conflict of interest* in representing their Members (for more information refer to clause 3.14 (iii)[b]).

No participant in the Matters is ABLE OR WILLING to *offer the FWC a submission on law and relevant facts which will assist the FWC in a way in which the FWC have not otherwise been assisted*".

- 40 **The *amicus brief* will assist the FWC in a way in which the FWC have not otherwise been assisted.**

2.10.2 The statement in para [11b] is:

- (i) false and misleading.

First and obvious falsification of the facts committed by the FWC is an omission of the fact that **the non-Union Workers are not represented at all** (whether competently or not).

- 50 While the Union Workers are [formally] represented by the Unions, who, in turn are represented by lawyers, the non-Union Workers have no voice in the Matters, but non-Union Workers will be

TO BE USED AS EVIDENCE

affected by the changes in the Awards in the same way as the Union members, but they have no right for audience in the Matters before the FWC.

As for the *competence* of the representatives, I must say that their “competence” is not only questionable, but should be investigated on the level (or even existence) of juristic skills/knowledge.

10 I was one of the persons who caused the establishment of the Royal Commission (Aged Care) and I saw how the “competent” (sarcasm) commissioners and lawyers did ruin any hope for improvement of the Aged Care sector.

Why the Unions did not fight for the Workers’ rights, but were waiting for the Royal Commission?! For two decades the Unions didn’t know about the gross violations of the workplace conditions in the Aged Care sector and were waiting for the useless report of the Royal Commission that confirms the facts, which were the public knowledge for years? What “competence” is the FWC talking about?

20 Are the lawyers, who represent the Unions (not the Workers!), competent? Then why is the Aged Care sector nearly derelict? The lawyers are representing the Unions forever – what is the result of their “competence”? – a mass exit of the Aged Care Workers from the Aged Care sector and a crisis!

The same as above is applicable to another “competent” participant – the Australian Government Solicitor. I had the “pleasure” of dealing with the AGS employees (lawyers) and directly with Mr. Michael Kingston, the Australian Government Solicitor – the level of competency is questionable.

30 And look, who is talking about “competency”? – the members of the Full Bench, the FWC’s umpires, who are so economical with the truth that state that a two year long procedure of amending three Awards (!!!) does not involve ... *a wide-ranging examination of working conditions!!!*

Why does the FWC refuse to reveal the grounds that would show why an acceptance of my involvement as the *Amicus curiae* ‘... *would unnecessarily delay the proceedings*’?

The *amicus brief* will improve the speed* and quality of proceedings, allowing gradual changes even as the Matters are progressing.

40 * I am sure my submissions will push the parties in the Matter to an “urgent agreement” to prevent exposure of their offences through the amicus brief.

The *amicus brief* will show how to represent the Aged Care Workers to prevent all “competent representatives” and a “competent tribunal” from mimicking “competent conduct” pretending to care about the Australian Workers!

The *amicus brief* will provide information that no other participant in the Matters, the FWC inclusive, is willing or able to provide!!!

2.10.3 The statement in para [11c] is:

- (i) misleading

The FWC had observed nothing! The FWC's "observation" (sarcasm) started and finished with the same phrase: "... *Mr Grabovsky's involvement as amicus curiae would be unlikely to assist us and accepting his involvement would unnecessarily delay the proceedings*".

10 It is not an observation, and it definitely is nowhere near of being a reason/ground for the *Decision-2*.

The FWC's remark is a *desperate wish* that its (the FWC's) baseless and fraudulent statement will be accepted. After nine years of litigation, the FWC should know better that their fraud will be detected and exposed.

2.10.4 The statement in para [11d] is:

- (i) false, misleading, incompetent and irrelevant.

20

The Statement of Intent (*SoI*) stipulates my goals in my battle for justice with numerous offenders, where the FWC as a tribunal and 30 (thirty!) members of the FWC are topping the list of the serious offenders.

I intend to act as a *private prosecutor* against some of the FWC members to bring them to account for serious and systematic misconduct. For nine years I am continuing litigation in the jurisdiction of the FWC; the President of the FWC and all its members are well aware of my intentions to get financial compensation for the losses and damages that had been inflicted upon a person, whom I represent (my wife) and myself.

30

The FWC was and continues fearing that the *amicus brief* will expose the FWC's corrupt conduct and by granting the *Amicus curiae application*, the FWC will factually incriminate itself in serious offences.

Probably, I am a bad Christian because I rarely forgive and *never forget*; but, on this occasion, in the *SoI*, I did offer the FWC not to proceed with compensation for myself and with prosecution of all 30 members (the number of offenders is growing) in exchange for an invitation to produce the *amicus brief* and the release of the *amicus brief* among all Aged Care Workers and related government structures.

40

The *SoI* contains an offer of not exposing the misconduct of the FWC members in exchange for the correction of their mistakes towards the Aged Care Workers (not only my wife) – in my opinion, **the wellbeing of the Aged Care Workers is way more important than punishment of a number of high-ranking crooks.**

The FWC, in their usual manner, has misrepresented my intent and my offer made in the *SoI*, depicting the *SoI* in the *Decision-2* in a misleading and false form.

TO BE USED AS EVIDENCE

The FWC did not publish the *Application 603* to which the *SoI* relates prior* to the *Decision-2*, preventing *any interested/intended reader* from seeing the obvious conflict between the essence of the *SoI* and the FWC's fraudulent interpretation.

* IT MUST BE NOTED: On the moment of this *Application 602/2*, the *Application 603* is not published, despite the written assurance made by the Office of the FWC President.

10 Another misleading statement made by the FWC in paragraph [11d] is that ... *a dispute which has already been heard and determined by the Commission*.

A dispute had been heard for almost 50 times (!) by 31 members (!) of the FWC over the period of nine years (!) but **this dispute is not resolved but is escalating**. All decisions, made by the FWC in the course of this dispute, are similar to Decision [2022] FWCFB 118 – **all of them (decisions) are the fraudulent official instruments designed to pervert the course of justice**.

20 One of the reasons for protracted litigation in jurisdiction of the FWC is for me to collect evidences of the FWC members' misconduct sufficient for criminal prosecution. The line of applications and decisions in relation to the *Amicus curiae Application* demonstrates perfectly obvious the FWC's reckless refusal to administer justice and to obey the Commonwealth law.

The last error – the element of *incompetency* in paragraph [11d] – is exposed in the *Decision-2* though the FWC's remark: ... *It would be entirely inappropriate to grant Mr Grabovsky's application in such circumstances*.

30 The essence of all my applications in relation to the *Amicus curiae Application* is to move the FWC to invite Igor Grabovsky to act as *Amicus curiae* in matters AM2020/99, AM2021/63 and AM2021/65 to produce the *amicus brief* that contains information, **which no other participant in the Matters is able or willing to provide**, but which (information) is vital to administration of justice, improvement of the Aged Care workplace conditions and remuneration.

Which circumstance does make a production of the *amicus brief* "inappropriate":

- 40
- (i) the fact that the *amicus brief* is based on objectively verifiable evidences obtained in a course of the nine year litigation in jurisdiction of the FWC and other tribunals (courts, commissions, etc.)? or/and
 - (ii) the fact that the *amicus brief* will expose methods that were used and continue to be used by various persons (legal and natural) for ruining the Aged Care sector through the brazen violation of the Aged Care Workers' rights and the law? or/and
 - (iii) the fact that the *amicus brief* will display methods and methodology how to detect and eradicate mistakes/misconduct that are ruinous for the Aged Care sector? or/and

TO BE USED AS EVIDENCE

(iv) the fact that the *amicus brief* will provide methodology for fair and proper evaluation of the remuneration rate that must reflect the workplace conditions. The applications (to amend the Awards) made by the Unions are fundamentally misconceived and the asking increase of the pay rate is not based on the objective methodology, but on the “emotional element” that the Aged Care Workers are “working hard”. Yes, the Aged Care Workers are working hard, but it is not the criterion that defines the measures that must be taken to ensure legitimate workplace conditions and fair remuneration. The Unions are unable to justify why the pay rate must be increased by 25% and not by 23% or by 37%; or/and

10

(iv) the fact that the *amicus brief* will display methods and methodology for speedy improvement of the Aged Care industry, methodology that can be used as a template for improving other sectors of our economy?

What is the “*monetary compensation*” has to do with the production of the *amicus brief*? – **the Amicus curiae (Igor Grabovsky) is not a party to the Matters!!!** – is there any lawyer in the house to explain it to the FWC?!

20 The FWC’s fraudulent remark had made it obvious that all its members are fearful that the FWC’s cartel like culture will be exposed in the *amicus brief* for the Australian people to see. The public exposure will make possible for me to act as a *private prosecutor with the help of the public scrutiny of the judicial conduct!* – it is the real reason behind the fraudulent FWC’s “observations” in attempt to prevent production and wide distribution of *the amicus brief*.

Correction:

2.10.5 For Error 11(a), (b) and (c), the FWC must provide information submitted by the Applicant/*Amicus curiae* to display a discrepancy between the essence of the Applicant’s submissions and the FWC’s statements. It would allow any *interested/intended reader* to establish the accuracy and legitimacy of the FWC’s statements/observations/conclusions.

30

2.10.6 For Error 11(d), the FWC must remove part of the paragraph [11] starting with words ... *Indeed it appears from Mr Grabovsky’s ‘Statement of Intent’,...* up to the end of the paragraph [11] as marked at the beginning of Section 10 above in paragraph [11d].

2.10.7 The corrected version of paragraph [11] of the *Decision-2* must reflect the true facts and should appear as shown in the paragraph [11] of the Attachment 2 – **Draft of the corrected Decision-2.**

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Following **Section 11** on page 26 addresses the next error.

2.11 **Section 11** Paragraph [12] state:

[12] **For the reasons given, we do not consider it appropriate to exercise the discretionary power under s.603 to vary or revoke the Decision. The proper course for Mr Grabovsky, if he remains aggrieved by the Decision, is to seek judicial review of it.**

Error(s):

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2.11.1 The statement (the beginning of the first sentence) in paragraph [12] is false and misleading in material particulars.

There are no grounds/reasons provided in the Decision-2 that would constitute any legal base for a dismissal of the Application 603.

All information provided by the FWC in the *Decision-2* is erroneous: being misleading or/and false or/and incompetent or/and irrelevant.

20

2.11.2 The second statement within the same sentence in paragraph [12] is false, misleading in material particulars, incompetent and erroneous on a point of law: the FWC has no discretionary power under section 603 of the *Fair Work Act 2009* in a sense implied by the FWC.

The general rule of law in any jurisdiction is: **No umpire is permitted to use its *discretion* that is by any method or in any form or shape renders ineffective the Act of the Parliament or/and perverts the course of justice. If “discretion” is used for perverting the course of justice – it is a serious offence!**

30

The error is addressed in Section 13 – *Deceptive methods used by the FWC for hiding the fraudulent nature of the official instruments created by the FWC Members* – further in this *Application 602/2*.

2.11.3 The suggestion made by the FWC in the second sentence of paragraph [12] is irrelevant, incompetent and corrupts procedural fairness.

The suggestion in paragraph [12] is irrelevant to the *Decision-2* because it provides no information on a reason why the *Decision-2* (and *Decision-1*) was made in its/their current form(s).

40

The members of the Full Bench, as constituted for the Matters, are not fit to provide any legal advice due to sever lack of juristic skills and judicial fairness.

An umpire(s) has no function or authority to provide any legal advice because such conduct is prejudice to each and every party to a[ny] proceeding and the umpire(s) must be immediately disqualified from presiding over the proceeding due to apprehended bias.

TO BE USED AS EVIDENCE

The errors are obvious on the face of the *Decision-2* and fundamental legal principals and doctrines.

Correction:

2.11.4 For Error 2.11.1, the FWC must remove words “*For the reasons given*”.

10 2.11.5 For Error 2.11.2, the FWC must remove word “*discretionary*”.

2.11.6 For Error 2.11.3, the FWC must remove sentence “*The proper course for Mr Grabovsky, if he remains aggrieved by the Decision, is to seek judicial review of it*”.

2.11.7 The corrected version of paragraph [12] of the *Decision-2* must reflect the true facts and should appear as shown in the paragraph [12] of the Attachment 2 – **Draft of the corrected Decision-2.**

20 Following **Section 12** on page 28 addresses the next error.

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2.12 **Section 12** Paragraph [13] states:

[13] The review application is dismissed.

Error:

10 2.12.1 The statement in paragraph [13] is the [actual] decision [2022] FWCFB 118 of the FWC on the *Application 603*.

While it is obvious on the face of provided documents that Decision [2022] FWCFB 118 is a fraudulent official instrument that perverts the course of justice and facilitates other serious offences, the paragraph [13] **must stay as it is** because *Application 602* under section 602 of the *Fair Work Act 2009* is not designed for correction (changes) of a decision, but for correction of the errors that led a tribunal to this decision.

Correction:

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2.12.2 The wording of the paragraph [13] stays as it is.

Next page 29 is **Section 13** – *Deceptive methods used by the FWC for hiding the fraudulent nature of the official instruments created by the FWC Members*.

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40

2.13 **Section 13** – *Deceptive methods used by the FWC for hiding the fraudulent nature of the official instruments created by the FWC Members.*

2.13.1 Omission of information

The FWC provides no particulars of the Applicant’s submissions precluding any *interested/intended reader* from establishing the factual accuracy, legitimacy and public interest of the FWC decision [2022] FWCFB 118, where the FWC had refused Igor Grabovsky’s
10 application to act as the *Amicus curiae* to produce the *amicus brief*.

Hiding the Applicant’s submissions from the Australian people on a moment of making decision [2022] FWCFB 118, the FWC is forcing any *interested/intended reader* of the *Decision-2* (that was published) to believe and accept that the FWC’s decision is legally and factually correct and made in public interest on a simple assumption that the *Decision-2* was made by the members of the FWC and hence, it is supposed to be legitimate and factually accurate.

On the moment of the *Decision-2* the *interested/intended readers* had been denied the opportunity to establish the factual accuracy, legitimacy and public interest of the *Application 603*.
20

Omission of information is one of the methods that is widely used by the FWC for hiding the *fraudulent nature* of the official instruments (decisions, statements, orders, etc.) fabricated by the FWC and misconduct of the FWC Members responsible for the falsification.

2.13.2 Erroneous application of the doctrine of *Stare decisis*

The doctrine of *Stare decisis* (doctrine of legal precedents) is applicable only when the legal circumstances of the matter that gave rise to a precedent do match the legal circumstances of the matter to which this precedent is meant to be applied.
30

The FWC has no regard to this key principle. The main and only criterion used by the FWC is that the “authority” must serve and satisfy the FWC’s goals (whatever they are) regardless of juristic suitability of the “authority” to the matter before the FWC.

The *Decision-2* (and *Decision-1*) displays the correctness of my statement with the utmost clarity.

In paragraph [9] of the *Decision-2*, President Ross cited case *Kruger vs The Commonwealth*, where Brennan CJ stated that “... *An amicus curiae is heard if that person is willing to offer the Court a submission on law or relevant fact which will assist the Court in a way in which the Court would otherwise not have been assisted*” and ... “*where the Court has parties before it who are willing and able to provide adequate assistance to the Court it is inappropriate to grant the application*”.
40

The FWC is using this citation in a *deceptive manner* creating a false public perception that Igor Grabovsky’s submission will not assist the FWC in a way in which the FWC would otherwise not

TO BE USED AS EVIDENCE

have been assisted and that the FWC does have parties before it, who are willing and able to provide an adequate assistance.

My *Application (Amicus curiae)* and the *Application 603* provide detailed and supported by the facts statements that the *Amicus curiae* (Igor Grabovsky) **will assist the FWC in a way in which the FWC have not otherwise been assisted and the *amicus brief* will provide information vital to the Matters that no other participant in the Matters is able or willing to provide.**

- 10 The “authority” unquestionably supports my applications, but the FWC, with its customary arrogance and disregard to the Commonwealth law decided to dismiss my applications, making any *interested/intended reader* of the Decision-2 (and Decision-1) to believe that the “authority” supports the FWC decisions, when, in fact, **the “authority” supports the Applicant’s/Amicus curiae legal stance.**

But, the *interested/intended reader* cannot establish the fraudulent nature of the FWC statements due to absence of relevant information upon which the decision is supposed to be made.

- 20 An erroneous application of the authority by the FWC in arriving to its decision had been addressed by me in the *Application 603* on pages 7 to 10, but the **FWC has ignored that information, failed to respond and concealed its failures from the Australian people.**

An application of “authorities” in jurisdiction of the FWC is justifiable only for two reasons:

- (a) where the subject of the legal proceeding is not covered by statute law; and
 - (b) the circumstances of the legal proceeding *exactly matches* a precedent case that established the methodology of dealing with a subject/issue before a tribunal.
- 30 *Doctrine of the application of legal precedents* is the bedrock of the *common law* and represents a subjective approach (judge’s opinion) that is a very weak judicial mechanism because it might not reflect the legal standards or meet public expectation of the proper administration of justice due to a “flaw” in the judge’s character. It is used by the courts from the time of the *Magna Carta* when judges were appointed not because of their knowledge or even understanding of the law but because of their social standings. We are not in the Dark Ages and nowadays, some “lay observers” have more scruples and their knowledge of the law is sometimes better than that of some judges.

- 40 **The statute law is designed to free tribunals from a subjective approach to the issues on dispute** and arbitrate matters in compliance with the people’s perception of justice expressed through the mechanism of legislation in the Parliament elected by the people. The Enacted (Statute) law is designed to standardize the judicial/arbitration process and provide objectively verifiable consistency of law application. The rulings of the FWC **must be consistent with the law** and not with the decisions of other members or judges where a judicial mistake could circulate in perpetuity.

TO BE USED AS EVIDENCE

The *Constitution* and *statute* are the mechanisms of democratic governance in Australia and they are **mandatory authorities that are superior to the case law**.

Erroneous application of the doctrine of *Stare decisis* is one of the methods widely used by the FWC for hiding the *fraudulent nature* of the official instruments (decisions, statements, orders, etc.) fabricated by the FWC and misconduct of the FWC Members responsible for the falsification and results in another kind of offence – abuse of power of the Office (of a decision-maker).

10

2.13.3 Disregard to the fundamental legal principles

There are four principals upon which all my Applications are based:

- (i) superiority of statute;
- (ii) no deed made in breach of statute law may be recognised as legitimate;
- (iii) arbitrating (judicial) decisions must be consistent with statute and not with the decisions made in previous matters; and
- (iv) prevalence of objectively recognisable evidence.

20

All four principles are the *fundamental postulates* of the Rule of Law.

Superiority of statute

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

30

The FWC members are systematically and wilfully substituting law with their opinions, calling it “*discretion*”.

The umpires are under a delusion that they are the law themselves and may* to do as they like with perfect impunity!

* IT MUST BE NOTED: By the way, the term/verb “*may*” in any Act of the Parliament has a meaning of “permitted” and it does not provide any umpire with a freedom of choice

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Even if the law (statute) does not provide the exact legal instructions, the umpires’ “discretion” is always restricted by many other objective factors, (e.g. evidence, circumstances, etc.), which preclude frivolous judicial behaviour.

TO BE USED AS EVIDENCE

The professional saying states: *Any judge has as much freedom as the parties to proceeding allow that judge to have.* A party, who is well versed in procedural/juristic/judicial issues, will never allow any umpire to act unlawfully.

Then why do we have so many umpires “behaving badly”? Where are the “competent lawyers” (sarcasm), who, are being the Officers of the Court, must stop misconduct (or, at least, to report it) of the misbehaving judges? – Ah! I forgot two more qualities in addition to the *competence*: a lawyer(s) must be **honest** and has **courage!** – a combination that is almost out of this world.

10

Such *inability or unwillingness* to report a corrupted umpire to a proper authority is leading to a situation, which could be described by another professional saying: *A good lawyer knows the law, but an excellent lawyer knows a judge!*

In a course of the nine year long dispute, none of the official instruments (decisions, statements, orders, etc.) made by the FWC have complied with the Commonwealth law.

No deed made in breach of statute law may be recognised as legitimate

20 The principle of the *prohibition of recognition of an offence as a legitimate deed* (be it action, event or statement) is **the reason why the Rule of Law was created in the first place.**

Arbitrating (judicial) decisions must be consistent with statute and not with the decisions made in previous matters

30 The principle of *consistency of judicial decisions with statute* ensures consistency of the judicial decisions through the uniformity of application of law. It prevents subjective approach to the process by judiciary and precludes a judicial mistake to circulate within a judicial system and to be used as an authority.

Prevalence of objectively recognisable evidence

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

40 **Disregard to the fundamental legal principles** is one of the methods widely used by the FWC for hiding the *fraudulent nature* of the official instruments (decisions, statements, orders, etc.) fabricated by the FWC and misconduct of the FWC Members responsible for the falsification.

All four principles form the basis for establishing of *prima facie* cases.

IT MUST BE NOTED: **No document, issued by Fair Work Commission in response to Mr. Grabovsky’s submissions, states that Mr. Grabovsky has falsely accused the Members of the Commission!**

THE FIRST LEGAL DISCLAIMER

On the 23 June 2022, I have made an application pursuant to sec. 594 (1)(a), (b) and (c) of the *Fair Work Act 2009* asking Fair Work Commission to treat my submission* as confidential,.

* The submission was made in a form of the Statement of Intent (“**the SoI**”) and the Application 594 was a part of the SoI.

- 10 I gave 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 (“**the FWC**”) and proper administration of justice.

The application [for confidentiality] was made for a purpose of providing the opportunity/best possible chances to improve situation in the Aged Care sector of Australia. In event of the rejection of an application for confidentiality, I required the FWC to publish the entire submission and all related correspondence on the FWC website in the section dedicated to the Aged Care Work Value case – matters AM2020/99, AM2021/63 and AM2021/65 (jointly “**the Matters**”).

- 20 The application pursuant to section 594(1)(a), (b) and (c) of the *Fair Work Act 2009* is a procedural application that must be decided upon its submission because the decision is affecting the further course of legal action on the [any] Applicant.

Two weeks after the submission, the decision about status of submission (confidentiality) had not been made and on the 07 July 2022, I have made the Request (“**the Request**”) for Information (on my application for confidentiality).

On the 20 July 2022, I have received a correspondence from the Office of the President of the FWC, stating the following:

30

OFFICIAL

Dear Mr Grabovsky,

I refer to your correspondence of 10 July 2022 and your submissions lodged on 24 June 2022. The President has decided not to make a confidentiality order in respect of your submissions. The submissions and your s.603 application will be published in full on the Commission’s website in the section dedicated to the Work value case – Aged care industry.

- 40 Regards,

Mirella Franceschini
Associate to The Hon. Justice Ross AO
President
Level 8/11 Exhibition Street, Melbourne 3000

Considering the decision made by the FWC, I will threat all correspondence as evidence and I will use it as I deem fit for upholding the Rule of Law in all Australian tribunals.

THE SECOND LEGAL DISCLAIMER

On the 20 July 2022, on a day, when I received a decision (notice) on my application for confidentiality from the chambers of Ross P, **neither**:

- my Application under section 603 of the *Fair Work Act 2009* to revoke/vary Decision [2022] FWCFB 77, nor

10 - the Statement of Intend and Application pursuant to section 594 of the same Act, nor

- the Request for Information/to make a decision,

were published by the FWC.

Upon receipt of the abovementioned decision [on 20.07.2022], I've checked the remaining sections of the *Aged Care Work Value case* [the FWC webpage] and found that on the 04 July 2022, the FWC has made a decision [2022] FWCFB 118 (the *Decision-2*) on my Application (the *Application 603*) under section 603 of the *Fair Work Act 2009*.

20

I do not know when exactly *Decision-2* had been published by the FWC, but I had not been informed about its (decision's) existence*: not on the date of the *Decision-2* [04 July 2022], not in the reply to my *Request* [20 July 2022].

* IT MUST BE NOTED: For over nine years, the FWC was **always** informing me about its decisions in writing. The previous decision – *Decision-1* [2022] FWCFB 77, which gave rise to the *Application 603*, had also been sent to me personally. My anticipation of being informed *personally* (as an applicant) about the fact of the existence of a decision on my *Application 603* is justified by the established practice.

30

As of the date of this *Application 602/2*, no correspondences, upon which the *Decision-2* is *supposed to be* made, were published on the FWC's website relevant to the Matters. Also, there is no indication that any relevant participant in the Matters had been officially informed about the *Application 603* and all relevant to the application correspondence sent by me to the FWC.

As a result of such manipulation of information by the FWC, any *interested/intended reader* (be it a member of public or a legal practitioner) cannot make a fully informed conclusion about legitimacy and accuracy of Decision [2022] FWCFB 118 and consequently of Decision [2022] FWCFB 77 and to establish the legal strength and the importance (public interest) of the requested by the Applicant/*Amicus curiae* measures.

40

On a moment of lodging this *Application 602/2* no documents related to the *Decision-2* had been published by the FWC. The Official statement made by the Office of the President of the FWC about publication, as shown in the First Legal Disclaimer, is **false and misleading in material particulars**.

THE THIRD LEGAL DISCLAIMER

Information from the Office of the President of the FWC about the *CA-594* [confidentiality] had been sent to me by **Ms. Mirella Francenschini**, an Associate to the FWC President.

In my personal communication with her, back in 2014 – 2018, Ms. Francenschini had assured me that she is reading all correspondence addressed to the FWC President which requires his response.

10

Ms. Francenschini also assured me that she is intelligent and competent enough to understand the essence of the [my] submitted documents.

I wish to draw an undivided attention of the Associate to the FWC President and the entire management of a tribunal to the fact that Ms. Francenschini (or any other associate) is working not for Mr. Ross (or any other [judicial] member of the FWC), but for Fair Work Commission, that is the Commonwealth entity subject to the *Public Governance, Performance and Accountability Act 2013*.

20 Ms. Francenschini (and any other associate) is engaged under the *Public Service Act 1999* and she has duties:

- to act in good faith and for proper purpose;
- of care and diligence;
- in relation to use of information; and
- in relation to use of position,

under the *Public Governance, Performance and Accountability Act 2013*.

30 The fact of misconduct of the President [of the FWC] Ross is based on objectively verifiable evidences and is obvious on the face of all my submissions.

While Ms. Francenschini is assisting Mr. Ross, she is accountable to the General Manager of the FWC and must report any alleged misconduct of the [judicial] FWC member to the accountable authority, which is the *General Manager of the FWC*, who has a duty to govern the Commonwealth entity.

40 By hiding the [my] complaints about serious misconduct of the numerous members of the tribunal and covering up for the FWC President Ross, Ms. Francenschini facilitates the perversion of the course of justice committing serious administrative and criminal offences.

If Ms. Francenschini will produce the evidence of her reports to the accountable authority about my numerous complaints that expose serious misconduct of the FWC President Ross and other members of the FWC, I will issue my apology as public as I have made my accusations.

PART III *Conclusion*

After correction of all errors and removal of all irrelevant information that was polluting the *Decision-2* it became *patently clear* that the *Decision-2* is a **fraudulent official instrument designed to pervert the course of justice**. In fact, when information submitted by the *Amicus curiae*/Applicant to the FWC is presented in sufficient quantity, it allows any *interested/intended reader* to understand the essence of submissions to see a total absurdity of the *Decision-2*.

- 10 Unlawful rulings must not circulate in the judicial system on any level because they are harmful to people. The Parliament is the proper place to create laws and the FWC must not create *substitute law* by making the fraudulent rulings that undermine the principles of the democratic governance in Australia.

Section 602 *Correcting obvious errors etc. in relation to the FWC's decisions* of the *Fair Work Act 2009* provides an instrument of correction.

- 20 It is vital to exercise diligence because the Decision [2022] FWCFB 118 in its current form constitutes a **fraudulent document designed to pervert the course of justice** – it is **an instrument of crime**.

Previously, some members of the FWC were trying to avoid correction of the obvious mistakes wilfully made in their decisions attempting to explain that section 602 is an analogy to a “slip rule” used in courts. Frivolous interpretation of the law by the people who are trying to justify their criminal conduct is not helpful. Section 602 of the *Fair Work Act 2009* clearly states:

- (1) *The FWC may correct or amend any obvious error, defect or irregularity* (whether in substance or form) in relation to a decision of the FWC (other than an error, defect or irregularity in a modern award or national minimum wage order).*

- 30 * My emphasis

IT MUST BE NOTED: **No document, issued by Fair Work Commission in response to Mr. Grabovsky's submissions, states that Mr. Grabovsky has falsely accused the Members of the Commission!**

Attached, is the draft of the Decision how it should appear after the correction of the mistakes.
Dated this 07th day of August 2022.

40 **TEXT ONLY**

Igor Grabovsky,
Applicant, *Amicus curiae*.

Encl.: Attachment 1 – **Copy of Decision [2022] FWCFB 118**

Attachment 2 – **Draft of corrected Decision [2022] FWCFB 118.**

ATTACHMENT 1
Copy of Decision [2022] FWCFB 118

[2022] FWCFB 118

DECISION

Fair Work Act 2009

s.603—Application to vary or revoke a FWC decision

10

Aged Care Award 2010
(AM2020/99)

Nurses Award 2020
(AM2021/63)

**Social, Community, Home Care and Disability Services Industry Award
2010**
(AM2021/65)

20

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT ASBURY
COMMISSIONER O'NEILL

MELBOURNE, 4 JULY 2022

Application to vary or revoke a FWC decision – application dismissed.

[1] On 8 May 2022, in what he described as the role of amicus curiae, Mr Grabovsky made an application in the Aged Care Work Value Case seeking a direction under s.590(2)(b)¹ of the Fair Work Act 2009 (the Act) for:

30

- him to submit an ‘amicus brief’ by 2 August 2022,
- the applicants in matters AM2020/99, AM2021/63 and AM2021/65 to distribute copies of the ‘amicus brief’ among ‘Aged Care Workers, Members and non-Members of the corresponding unions’ within 30 days, and
- the Commonwealth to distribute the ‘amicus brief’ among ‘government structures responsible for the Health and Aged Care’ by 30 August 2022.

40 [2] In a decision² published on 19 May 2022 (the Decision) we dismissed Mr Grabovsky’s application on the basis that ‘the brief would be unlikely to be of any assistance and accepting it would unnecessarily delay proceedings.’³

¹ We understand that where Mr Grabovsky refers in his application to s.509(2)(b) of the Act, he means s.590(2)(b).

² [2022] FWCFB 77.

³ Ibid [4].

TO BE USED AS EVIDENCE

[2022] FWCFB 118

2

[3] Mr Grabovsky has now lodged an application pursuant to s.603 of the Act seeking that the Commission revoke the Decision and issue a direction in similar terms to those set out at [1] above (the ‘review application’).

[4] The discretionary power in s.603(1), to vary or revoke a decision, has a broad and flexible operation; it is not cast in terms of a power to be exercised only in particular stated events or circumstances.⁴

10

[5] Mr Grabovsky was provided with the opportunity to file submissions in support of the review application and lodged submissions in the form of a ‘Statement of Intent’.

[6] There is nothing in Mr Grabovsky’s submissions that persuades us to conclude that the Decision should be reviewed.

20

[7] The Commission has a broad discretion to ‘inform itself in relation to any matter before it in such manner as it considers appropriate’ (s.590(1) of the Act). Further, s.577 provides that the Commission must perform its functions and exercise its powers quickly, in a manner that is fair and just and avoids unnecessary technicalities, and openly and transparently.

[8] As mentioned earlier, Mr Grabovsky is seeking to be heard as amicus curiae. The approach taken by the courts to the hearing of amicus curiae is instructive.

[9] An amicus curiae is heard if that person ‘is willing to offer the Court a submission on law or relevant fact which will assist the Court in a way in which the Court would otherwise not have been assisted’.⁵ Courts have adopted a cautious approach to considering applications to be heard by persons who would be amicus curiae lest the efficient operation of the court be prejudiced. Further, as Brennan CJ observed in *Kruger v The Commonwealth*:

30

‘where the Court has parties before it who are willing and able to provide adequate assistance to the Court it is inappropriate to grant the application’.⁶

[10] These observations are apposite in the present circumstances.

40

[11] In the *Aged Care Work Value* case we are considering whether to vary wage rates for aged care employees in three modern awards. The case is not a wide-ranging examination of working conditions in the aged care sector and nor is it an inquiry into the conduct of employers or unions in the sector. The parties appearing in the proceedings are competently represented and those representatives are assisting us in our consideration of the various applications. Further, as we observed in our decision of 19 May 2022, Mr Grabovsky’s involvement as amicus curiae would be unlikely to assist us and accepting his involvement would unnecessarily delay the proceedings.

⁴ *Minister for Industrial Relations for the State of Victoria v Esso Australia Pty Ltd* [2019] FCAFC 26 [34] and [73].

⁵ *Levy v Victoria* (1997) 189 CLR 579, 604 (per Brennan CJ).

⁶ Transcript of 12 February 1996 at 12 cited in *Levy v Victoria* (1997) 189 CLR 579, 604.

[2022] FWCFB 118

3

Indeed it appears from Mr Grabovsky's 'Statement of Intent', filed in support of the review application, that one of his objectives in seeking to file an amicus curiae brief is to secure monetary compensation for himself and his wife in respect of a dispute which has already been heard and determined by the Commission. It would be entirely inappropriate to grant Mr Grabovsky's application in such circumstances.

10 [12] For the reasons given, we do not consider it appropriate to exercise the discretionary power under s.603 to vary or revoke the Decision. The proper course for Mr Grabovsky, if he remains aggrieved by the Decision, is to seek judicial review of it.

[13] The review application is dismissed.

PRESIDENT

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ATTACHMENT 2
DRAFT of the corrected Decision [2022] FWCFB 118

DECISION

Fair Work Act 2009

s.603—Application to vary or revoke a FWC decision

10 **Aged Care Award 2010**
(AM2020/99)

Nurses Award 2020
(AM2021/63)

**Social, Community, Home Care and Disability Services Industry Award
2010**
(AM2021/65)

20 JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT ASBURY
COMMISSIONER O’NEILL

MELBOURNE, XX AUGUST 2022

Application to vary or revoke a FWC decision – application dismissed.

[1] On 8 May 2022, Mr Grabovsky, acting as *amicus curiae*, made an application (“the Application”) in the Aged Care Work Value Case (“the Case”) seeking a direction under s.590(2)(b)¹ of the Fair Work Act 2009 (the Act) for:

- 30
- him to submit an ‘amicus brief’ by 2 August 2022,
 - the applicants in matters AM2020/99, AM2021/63 and AM2021/65 to distribute copies of the ‘amicus brief’ among ‘Aged Care Workers, Members and non-Members of the corresponding unions’ within 30 days, and
 - the Commonwealth to distribute the ‘amicus brief’ among ‘government structures responsible for the Health and Aged Care’ by 30 August 2022.

40 In his Application Mr. Grabovsky stipulated reasons and public interest in production of the *amicus brief* stating that:

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 (means the Aged Care Work Value Case).

¹ We understand that where Mr Grabovsky refers in his application to s.509(2)(b) of the Act, he means s.590(2)(b).

[2022] FWCFB 118

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.

10

The Application states that the *amicus brief* is based on two principles:

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

Mr. Grabovsky had attached the Statutory Declaration to his Application, declaring that:

20

... 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.

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.

30

Mr. Grabovsky also attached the *Summary of the amicus brief* (the Summary) informing us, the FWC, that the *amicus brief* is:

- exposing the well documented fact that the Unions [the HSU and ANMF] have *conflict of interest* that precludes their representation of the interests of their Members (Aged Care Workers) in the Case;

40

- exposing the well documented fact that 30 (thirty) Members of the FWC, including the members of the Full Bench, as constituted for the Case, were systematically committing serious offences and were directly involved or/and instrumental in/for production of the fraudulent official instruments (decisions, statements, orders) that facilitated massive defrauding of the Commonwealth and the Aged Care Workers exploiting the latter to a degree that constitutes modern slavery.

- exposing the well documented fact that 30 (thirty) Members of the FWC, including the members of the Full Bench, as constituted for the Case, have facilitated and contributed to multiple deaths of the aged care recipients.

[2022] FWCFB 118

- also exposing the futility of the Royal Commission into Aged Care Quality and Safety.

The Summary informs us, the FWC, on the benefits of the *amicus brief* in providing concrete solutions to fix many problems in the Aged Care sector, some of the solutions are with immediate effect.

10 **It is obvious that no other participant in the Case is willing or able to release information as [in] the *amicus brief*.**

[2] In a decision² published on 19 May 2022 (the Decision) we dismissed Mr Grabovsky's application on the basis that 'the brief would be unlikely to be of any assistance and accepting it would unnecessarily delay proceedings.'³

In our decision we did not specify any ground or provided any explanation:

- why the *amicus brief* would be unlikely to be of any assistance; and

20

- why an acceptance of the *amicus brief* would unnecessary delay proceedings,

IT MUST BE NOTED: **No document, issued by Fair Work Commission in response to Mr. Grabovsky's submissions, states that Mr. Grabovsky has falsely accused the Members of the Commission!**

30 [3] Mr Grabovsky has now lodged an application pursuant to s.603 of the Act seeking that the Commission revoke the Decision and issue a direction in similar terms to those set out at [1] above (the 'review application').

Mr. Grabovsky's 16 page Application + 1 page Draft of Directions ("the Application 603") provides legal ground for each paragraph of our Decision ([2022] FWCFB 77) exposing errors of fact and law made by the FWC in arriving to Decision.

40 It seems that addressing the unlawful nature of our Decision, Mr. Grabovsky had introduced one more reason/ground (in addition to the grounds stipulated in the Amicus Application) in support of public interest and legal necessity for production of the *amicus brief*: **denial of natural justice to the non-Union Aged Care Workers.**

In section 3.14 (iii) of Application 603 Mr. Grabovsky states:

The variation of the Awards (that is not necessary to be favourable for the Workers) will equally

² [2022] FWCFB 77.

³ Ibid [4].

TO BE USED AS EVIDENCE

[2022] FWCFB 118

*affect **both categories** of Workers, but the Non-Union-Workers are not legally represented in the Matters and they do not have an effective instrument or/and a mechanism to influence the process or to instruct the legal representatives that are acting for and on behalf of the Unions.*

10 *The amicus brief will inform all Aged Care workforces through the **channels of distribution of information TO BE ordered by the FWC in its Directions** on the choices the Workers should have but which currently are hidden from them denying the opportunity for the Workers to make an informed choice/decision.*

*IT MUST BE NOTED: For the reasons, which [to be] stipulated in the amicus brief, there is a legal person that **MUST** represent the interest of all Non-Union-Workers, but that person is currently neglecting its statutory duties (be it function, power, authority or care).*

20 ***NATURAL JUSTICE is denied to the Non-Union-Workers, which constitute a large segment of the Aged Care workforce nationwide.***

The amicus brief will provide information that is crucial for the administration of natural justice, and which no other participant in the proceeding is willing or able to provide.

In the *Application 603*, Mr. Grabovsky continues to be adamant that ... **The amicus brief will assist the FWC in a way in which the FWC have not otherwise been assisted**, providing the reasons for such insistence.

30 Based on our previous decisions and statements it is obvious that in our opinion, the *amicus brief* would unlikely to be of any assistance to us, to the FWC, because:

- compliance with the Commonwealth law;
- guarantee of natural justice to all people to be affected by the Case;
- exposure of the corrupted conduct of the Presiding Members of the FWC in the Case;
- exposure of people, who have conflict of interest in dealing with the issues that are integral parts of the Case; and
- 40 - other similar “nuisances” contained in the *amicus brief*,

would unnecessary delay proceedings.

[4] --- removed

[5] Mr Grabovsky was provided with the opportunity to file submissions in support of the review application and lodged submissions in the form of a ‘Statement of Intent’.

[2022] FWCFB 118

In his Statement of Intent (“the SoI”) Mr. Grabovsky had made an offer to the Members of the Full Bench presiding over the Case and to all other Members of the FWC identified in his submissions as the offenders.

The essence of his offer is the following:

10 In the event of an invitation to the production of the *amicus brief*, such decision would be self-incriminating for the FWC, the Unions, the peak bodies, the Australian Government Solicitor (and a number of other offenders).

Mr. Grabovsky offered not to pursue criminal prosecution of the FWC Members in exchange for an invitation to produce the *amicus brief* and a legal revisiting (appeal process) of the Decisions, which the unscrupulous officials, unions, peak bodies, aged care service providers are widely and continuously using for defrauding the Workers and the Commonwealth (it’s about \$3 B annually).

20 The offer is made to assure the FWC Members (and other offenders) that their decision to invite production of the *amicus brief* will not be used against them.

The SoI, in combination with other Mr. Grabovsky’s submissions, makes a powerful package of measures to insure the full compliance with the Commonwealth law by all subjects of the Case in the interest of the Australian people and provides irrefutable reason for reviewing the Decision.

[6] There is nothing in Mr Grabovsky’s submissions that persuades us to conclude that the Decision should be reviewed.

30 [7] --- removed

[8] As mentioned earlier, Mr Grabovsky is seeking to be heard as *amicus curiae*. The approach taken by the courts to the hearing of *amicus curiae* is instructive.

[9] An *amicus curiae* is heard if that person ‘is willing to offer the Court a submission on law or relevant fact which will assist the Court in a way in which the Court would otherwise not have been assisted’.⁵ Courts have adopted a cautious approach to considering applications to be heard by persons who would be *amicus curiae* lest the efficient operation of the court be prejudiced. Further, as Brennan CJ observed in *Kruger v The Commonwealth*:

40 ‘where the Court has parties before it who are willing and able to provide adequate assistance to the Court it is inappropriate to grant the application’.⁶

In the *Statutory Declaration* and the *Summary of the amicus brief* that is a part of the

⁵ *Levy v Victoria* (1997) 189 CLR 579, 604 (per Brennan CJ).

⁶ Transcript of 12 February 1996 at 12 cited in *Levy v Victoria* (1997) 189 CLR 579, 604.

[2022] FWCFB 118

Application (*Amicus curiae*), Mr. Grabovsky clearly identified what kind of information to be provided within the *amicus brief* and why it is legally necessary and in public interest to invite the production of the *amicus brief* for wide distribution among the Australian people.

10 Among the grounds provided in Mr. Grabovsky's submissions, there are three reasons that make his Applications to be granted in the interest of the Australian people:

- (i) the *amicus brief* will provide information that no other participant in the proceeding is willing or able to provide;
- (ii) the *amicus brief* will assist the FWC in a way in which the FWC have not otherwise been or would be assisted; and
- (iii) the *amicus brief* will provide information necessary for compliance with the Rule of Natural Justice for the non-Union Aged Care Workers in matters AM2020/99,
20 AM2021/63, AM2021/65.

[10] These observations are apposite in the present circumstances.

[11] In the Aged Care Work Value case we are considering whether to vary wage rates for aged care employees in three modern awards. In our opinion, the case **is not a wide-ranging examination of working conditions** in the aged care sector and nor is it an inquiry into the conduct of employers or unions in the sector.

30 In his Application under s. 603, Mr. Grabovsky disagrees with our, the FWC's, opinion stating that the Aged Care Work Value case **is a wide-ranging examination of working conditions** in the aged care sector because amendments of three Modern Awards involve an amendment of the classification schedule and varying of wage rates, the tasks, which require wide-ranging examination of working conditions.

40 The fact that the Case continues for two years and the Digital Hearing Book for the Case contains more than 25 000 pages of the experts' reports, statements, submissions, etc., – the similar term and volume of information had been submitted to the Royal Commission into Aged Care Quality and Safety, – indicates that the Case is a wide-ranging examination of working conditions that does not correspond with the FWC's statement about the scale and purpose of the Case.

In his submission, Mr. Grabovsky states that ... *The wage is an equivalent of the work expressed in a monetary form* and the Case must be a wide-ranging examination of working conditions because it is impossible to establish the fair level of remuneration without the exploration and full understanding of the exact nature of work the workers perform, the working conditions, the workplace relations, the workload, classification and the type of prerequisite skills necessary for performance of certain tasks, the conduct of the employers towards the employees and towards the Commonwealth.

[2022] FWCFB 118

The FWC is satisfied that the parties appearing in the proceedings are competently represented and those representatives are assisting us in our consideration of the various applications.

10 In his Application under s. 603, Mr. Grabovsky stated that the FWC have failed to take into account information provided within the Application (of *Amicus curiae*), which identifies the reasons why the current representational arrangements cannot be deemed as appropriate and why the current participants in the Case **are not able or willing** to assist the FWC in a way and in a manner the *amicus brief* will.

Further, as we observed in our decision of 19 May 2022, Mr Grabovsky's involvement as *amicus curiae* would be unlikely to assist us and accepting his involvement would unnecessarily delay the proceedings.

The FWC's observation of Mr. Grabovsky's submissions shows that the *amicus brief* would unlikely to be of any assistance to us, the FWC, because:

- 20 - compliance with the Commonwealth law;
- guarantee of natural justice to all people to be affected by the Case;
- exposing the corrupted conduct of the Presiding Members of the FWC in the Case;
- exposing people, who have conflict of interest in dealing with the issues that are integral parts of the Case; and
- other similar "nuisances" contained in the *amicus brief*,
- 30 would unnecessary delay proceedings.

[12] We do not consider it appropriate to exercise the power under s.603 to vary or revoke the Decision.

[13] The review application is dismissed.

PRESIDENT

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