

8 April 2019

Fair Work Commission  
By email: AMOD@fwc.gov.au

Dear Sir/Madam,

**AM2018/13 – Aged Care Award 2010 – Substantive Issues**

We refer to recent correspondence from United Voice (UV) dated Friday, 5 April 2019 timed at 7:00pm, containing Form F1 application in respect of UV's claim to vary the Aged Care Award by seeking to insert a new telephone allowance clause in the Award (the application).

The hearing of substantive issues, including the issue of telephone allowance, is due to commence before the Full Bench on Wednesday 10 April 2019. In the light of this, the application requests the Commission to inform itself of the statements of Belinda Sinclair dated 16 January 2019, Deon Fleming dated 16 January 2019 and Trish Stewart dated 17 January 2019 (the statements). These statements were filed by UV in the review of the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADSI Award), (AM2014/285) on 15 February 2019.

UV makes the following submissions at paragraphs 4 and 5 of its application:

- There is substantial similarity between sectors covered by the 2 modern awards as both broadly concern the provision of care services.
- There is substantial and sufficient similarity between the work performed by the 3 witnesses and work performed under the Aged Care Award for the other evidence (the statements) to be probative and of use in the review of the Aged Care Award in relation to the Applicant's telephone allowance claim.

The employer parties listed below jointly dispute that there are substantial and sufficient similarities between the SCHADSI Award and Aged Care Award and indeed the distinction is supported by the fact that the SCHADSI Award expressly excludes coverage to employers and employees covered by the Aged Care Award.<sup>1</sup>

As the statements concern employees covered by the SCHADSI Award, the employees are, as a direct consequence of clause 4.2 SCHADSI Award, not covered by the Aged Care Award. The employer parties below therefore oppose the application on the ground of relevance. That is, the statements are not relevant to these current proceedings and is not admissible as a result.<sup>2</sup>

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<sup>1</sup> Clause 4.2 Social, Community, Home Care and Disability Services Industry Award 2010.

<sup>2</sup> Pursuant to section 55 and 56 Evidence Act 1995 (Cth) and see *Thompson v John Holland Group Pty Ltd* [2012] FWA 10363 at [30].

If, in the alternative, the Commission is persuaded that the statements ought to be admitted as evidence in the current proceedings and with the hearing due to commence in less than two days, on the basis that the employer parties below have members with substantial interest in the Aged Care Award, it seeks a postponement of the hearing in order for it to be provided with an opportunity to consider the new evidence and, to any extent as required, to reply to the evidence.<sup>3</sup>

Yours faithfully,

A handwritten signature in black ink, appearing to be a stylized name, possibly 'John' or similar, written in a cursive style.

**Aged and Community Services Australia**  
**Leading Age Services Australia**  
**Australia Federation of Employers & Industries**

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<sup>3</sup> In accordance with the principles of procedural fairness including an opportunity to be heard – see *Kioa v West* (1985) 159 CLR 550.