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Sent: Thursday, 28 April 2022 7:52 PM
To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>; AMOD <AMOD@fwc.gov.au>
Cc: Alex Grayson <AGrayson@mauriceblackburn.com.au>; Ben Redford <Ben.Redford@unitedworkers.org.au>; Jordan Lombardelli <jordan.lombardelli@ablawyers.com.au>; Alana Rafter <Alana.Rafter@ablawyers.com.au>; pparker@mauriceblackburn.com.au; nigel.ward@ablawyers.com.au; Nick White <nwhite@gordonlegal.com.au>
Subject: FW: FWC Aged Care Draft Direction (002).docx
Importance: High

Dear Associate,

WE refer to your email in which you conveyed the President's request that the parties provide a Draft order to reflect the proposal advanced by the parties for a direction concerning the hearing of the Union lay witnesses by Commissioner O'Neill.

WE now enclose a Draft Direction for the consideration of the President. Please note the Draft is dated 28 April 2022.

The enclosed Draft is provided as a joint proposal with the agreement of the UWU, HSU and ABLA's clients ACSA and LASA.
The representatives of these parties are copied to this email.

Yours sincerely,

Philip Gardner
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DRAFT DIRECTION

Fair Work Act 2009

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

Aged Care Award 2010

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

Nurses Award 2020

(AM2021/63)

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

(AM2021/65)

Aged care industry

JUSTICE ROSS, PRESIDENT

MELBOURNE, 28 APRIL 2022

DRAFT DIRECTION

Applications to vary modern awards – work value – Aged Care Award 2010 – Nurses Award 2020 – Social, Community, Home Care and Disability Services Industry Award 2010 – direction issued for hearing of certain evidence by a single member of the Full Bench.

[1] The Full Bench in a Statement of 24 April 2022 2022 FWCFB 58 at [3] – [12] determined that the evidence of the 81 Union lay witnesses is to be heard by a single member of the Full Bench, Commissioner O’Neill, who is to provide a Report to the Full Bench.

[2] On 28 April 2022 the Australian Nursing and Midwifery Federation (ANMF) wrote to the Commission proposing that, for abundant caution, the President formalise the position determined by the Full Bench by way of a written direction, under section 616(3D)(b), section 582(2) and/or section 590, to the effect that Commissioner O’Neill hear the evidence of the Union lay witnesses and prepare a report for the Full Bench. The correspondence reflected a joint position of the HSU, UWU, and ABLA’s clients ACSA and LASA.

[3] Section 616((3C) relevantly provides that a variation of a Modern Award must be made by a Full Bench. The provisions referred to in the ANMF's correspondence provide for the President to make directions of the kind suggested by the parties.

[4] I direct that Commissioner O'Neill hear the evidence of the Union lay witnesses and prepare a report for the Full Bench in respect of that evidence.

PRESIDENT