

From: Alex Grayson <AGrayson@mauriceblackburn.com.au>

Sent: Friday, 20 May 2022 4:25 PM

To: Chambers - O'Neill C <Chambers.ONeill.C@fwc.gov.au>; Nigel.Ward@ablawyers.com.au; Alana Rafter <Alana.Rafter@ablawyers.com.au>; Jordan Lombardelli <jordan.lombardelli@ablawyers.com.au>; Ben Redford <Ben.Redford@unitedworkers.org.au>; Sheldon Oski <Sheldon.Oski@unitedworkers.org.au>; nwhite@gordonlegal.com.au; pgardner@gordonlegal.com.au

Cc: Penny Parker <PParker@mauriceblackburn.com.au>

Subject: AM2020/99, AM2021/63, AM2021/65 - Aged Care Work Value Case - hearing on Monday and evidence [MBC-VIC.FID4764043]

Importance: High

Dear Associate,

We refer to our email below and the hearing listed for Monday in this matter.

We wish to acknowledge the willingness of the Commission and the other parties to have a special fixture on Monday to hear the evidence of Ms Kelly and Mr Barnes. Unfortunately, Mr Barnes has now advised the HSU that he is unwilling to attend the Commission to be cross-examined. He advises that he has left the Aged Care industry and will not attend a hearing. He is still willing for his statement to be relied upon. The HSU has been unable to contact Ms Kelly despite repeated attempts, has not been able to ascertain her state of health and cannot confirm her availability to attend on Monday.

In the circumstances, we request that the hearing listed for Monday at midday be vacated. We apologise for any inconvenience caused.

For the reasons previously put, we press our request for the statements of the following witnesses to be accepted and given appropriate weight (given the lack of availability of the witnesses for cross-examination):

1. Ms Deborah Kelly.
2. Mr Stephen Barnes.
3. Andrew Whyte.
4. Agnes Charlier.
5. Roseann Sodermans.

We do not consider that the employer parties would be prejudiced by allowing these statements in to evidence in a manner that could not be adequately addressed by submissions as to weight. This is not a circumstance in which there is any reason to doubt the credibility of the witnesses nor have witnesses generally been challenged in relation to the veracity or reliability of what is said in their witness statements.

To the contrary, if the statements were not accepted, we consider that the Commission's consideration of this matter would be prejudiced as four of these witnesses have provided the only witness statements filed by the HSU from cleaners and maintenance staff covered by the *Aged Care Award 2010*.

Should the Commission determine not to accept the above statements then the HSU will seek leave to file two further witness statements from maintenance workers and one from a cleaner. These

could be filed by 30 May 2022. The witnesses would then make themselves available for cross-examination in short order.

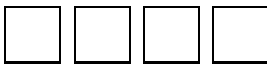
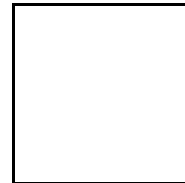
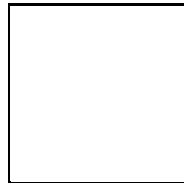
Finally, the HSU withdraws the statement of Adrienne (Shelly) White and does not seek to rely on her evidence.

Should the Commission wish for any further information or have any questions then please contact the writer.

Regards,
Alex

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From: Alex Grayson <>

Sent: Thursday, 12 May 2022 12:40 PM

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Cc: Penny Parker <PParker@mauriceblackburn.com.au>

Subject: AM2020/99, AM2021/63, AM2021/65 - Aged Care Work Value Case - HSU Witness

Availability [MBC-VIC.FID4764043]

Dear Associate,

Further to the submission of the HSU yesterday to the effect that there are a number of HSU witnesses who were not available for cross-examination during these proceedings, we provide further information as follows:

Category 1- Witnesses who are willing to be cross-examined

1. Ms Deborah Kelly became very unwell with COVID during these proceedings and remains too unwell to give evidence over the next two days.
2. Mr Stephen Barnes has been travelling in the Daintree during these proceedings and has unexpectedly been uncontactable.

Category 2- Witnesses who are unwilling or unable to be cross-examined

3. Andrew Whyte has left the aged care industry. He is also experiencing familial issues. His sister is extremely sick and is about to pass away.
4. Agnes Charlier has expressed that she fears she will lose her job if she was to undergo cross examination. She also has primary carers responsibilities for her invalid husband.
5. Adrienne (Shelly) White has left the industry.
6. Roseann Sodermans is very nervous and is scared to be cross examined.

ABI has previously advised that it requires all of the above witnesses for cross-examination.

In the circumstances the HSU submits that the Commission should adopt the following approach:

Category 1

- That the Commission set down a one hour special fixture to take the evidence of Ms Kelly and Mr Barnes.

Category 2

- That the Commission accepts the statements of these witnesses as filed and gives them appropriate weight (given the lack of availability of the witnesses for cross-examination).

Further, the HSU respectfully requests that, should the Commission consider that this email needs to be publicly available, that the names and personal information of the above witnesses be redacted.

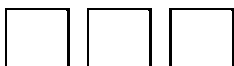
Regards,
Alex

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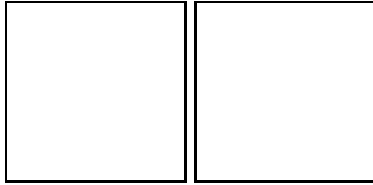
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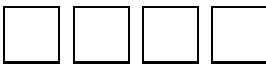
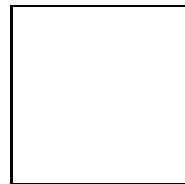
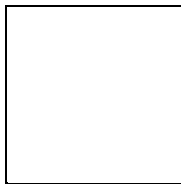
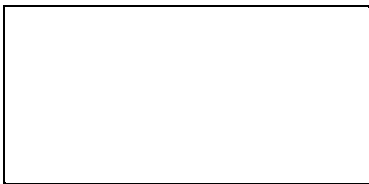
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