

**From:** Chambers - Hatcher VP <[Chambers.Hatcher.VP@fwc.gov.au](mailto:Chambers.Hatcher.VP@fwc.gov.au)>

**Sent:** Thursday, 28 July 2022 9:23 AM

**To:** AED Legal <[aedlegal@aed.org.au](mailto:aedlegal@aed.org.au)>; Kyle Scott <[Kyle.Scott@ablawyers.com.au](mailto:Kyle.Scott@ablawyers.com.au)>; Mary Walsh <[marywalsh6@bigpond.com](mailto:marywalsh6@bigpond.com)>; Leigh Svendsen <[leighs@hsu.net.au](mailto:leighs@hsu.net.au)>; Emma Gruschka <[Emma.Gruschka@sparke.com.au](mailto:Emma.Gruschka@sparke.com.au)>; Ashley Sherr <[Ashley.Sherr@sparke.com.au](mailto:Ashley.Sherr@sparke.com.au)>; Peter Cummins <[peter.cummins@catholiccare.org](mailto:peter.cummins@catholiccare.org)>; Illy Rogers <[illy.rogers@catholiccare.org](mailto:illy.rogers@catholiccare.org)>; Sunil Kempfi <[skempfi@actu.org.au](mailto:skempfi@actu.org.au)>; Ben Redford <[ben.redford@unitedworkers.org.au](mailto:ben.redford@unitedworkers.org.au)>; Nigel.ward@ablawyers.com.au; Julian Arndt <[Julian.Arndt@ablawyers.com.au](mailto:Julian.Arndt@ablawyers.com.au)>; Alana Rafter <[Alana.Rafter@ablawyers.com.au](mailto:Alana.Rafter@ablawyers.com.au)>; Claudia Simmons <[Claudia.Simmons@Ablawyers.com.au](mailto:Claudia.Simmons@Ablawyers.com.au)>; 'Kirrily Boulton' <[Kirrily.Boulton@endeavour.com.au](mailto:Kirrily.Boulton@endeavour.com.au)>; 'Kerrie Langford' <[Kerrie.Langford@nds.org.au](mailto:Kerrie.Langford@nds.org.au)>; Chris Christodoulou <[chrisc@greenacres.net.au](mailto:chrisc@greenacres.net.au)>

**Subject:** FW: AM2014/286 - Application for witness summons

OFFICIAL

Dear Parties,

As foreshadowed during yesterday's directions hearing in the above matter, please find **attached** an application for witness summons filed yesterday by the AED Legal Centre. The Vice President directs that any party opposing this application file a submission by **5:00pm (AEST) tomorrow (Friday 29 July 2022)**.

Kind regards,  
Caroline

**Caroline Beasley**  
Associate to Vice President Hatcher



## Fair Work Commission

Australia's national workplace relations tribunal

T (02) 9308 1812

E [chambers.hatcher.vp@fwc.gov.au](mailto:chambers.hatcher.vp@fwc.gov.au)

Level 11, Terrace Tower, 80 William Street, EAST SYDNEY NSW 2011

[www.fwc.gov.au](http://www.fwc.gov.au)

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

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

**From:** AED Legal <[aedlegal@aed.org.au](mailto:aedlegal@aed.org.au)>

**Sent:** Wednesday, 27 July 2022 4:59 PM

**To:** Chambers - Hatcher VP <[Chambers.Hatcher.VP@fwc.gov.au](mailto:Chambers.Hatcher.VP@fwc.gov.au)>

**Subject:** AM2014/286 - Application for witness summons

Dear Associate

We refer to the directions hearing this morning.

During directions, the Vice President directed that the AED provide chambers with its application for witness summonses directed to the two individuals mentioned by counsel. This email attaches those applications.

The individuals to whom the summonses would be directed are Ms Kerrie Langford, who is Head of Employment of the National Disability Services (**NDS**), and Ms Gerrie Mitra, who holds the position of General Manager, Provider and Market division, with the National Disability Insurance Agency (the **NDIA**).

AED (or the other employee parties) was not in a position to call Ms Langford or Ms Mitra in chief and so provide a statement. Ms Langford is an officer of another party. Ms Mitra is too; she is an officer of the Commonwealth (the NDIA). The NDS is an interested party to this review. For this round of hearings, NDS, together with Australian Business Industrial and the NSW Business Chamber, has made submissions to the Full Bench and intend to call evidence. They propose new wages classifications and removal of the SWS for those to whom these classifications would, on their proposal, apply. This was proposed on 8 July 2022. The NDIA administers the National Disability Insurance Scheme.

Ms Langford and Ms Mitra gave evidence to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the **Royal Commission**). The transcript of the evidence they gave to that inquiry is publicly available. The evidence was given as part of the Royal Commission's inquiry into ADE employment, including the wages position of employees with a disability in ADE employment.

Ms Langford's evidence dealt directly with subjects relevant to the Full Bench's deliberations, including the nature and structure of ADE employment, the wages position that subsists now and the wages position that NDS and its members are working to in the future. The evidence reflects an industry subject to change in response to business conditions and social conditions. Ms Mitra's evidence dealt directly with the effect on ADE employment of the NDIS scheme. At the time of the first round of hearings, the NDIS was new and undeveloped. Ms Mitra's evidence serves to update the Full Bench on these developments.

AED is mindful of the need for efficiency in the preparation of this matter. To that end, AED will endeavour to explore with the other parties whether it is possible to avoid the need to lead further viva voce evidence, perhaps by tendering by agreement documents as evidence of the facts contained therein. However, at this time the AED presses the orders the subject of this application.

Kind regards

*Phillip Zlatkovic*

**Human Rights Advocate**  
**On behalf of**  
**AED LEGAL CENTRE**

Suite 1 Level 9, 45 William Street, Melbourne 3000.  
Tel: (03) 9639 4333 Fax: (03) 9650 2833 web:[www.aed.org.au](http://www.aed.org.au)



***AED has adopted both a COVIDsafe Plan as well as a comprehensive COVID-19 policy prepared in accordance with Government and Law Institute Guidelines.***

**Liability limited by a scheme approved under Professional Standards Legislation**

*AED acknowledges the traditional custodians of the lands across Australia and particularly the Wurundjeri people of the Kulin Nation, on which AED is situated. We pay deep respect to Elders past and present.*

**Help AED by making a Tax Deductible donation at:**  
[www.aed.org.au](http://www.aed.org.au)

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**Facebook** [www.facebook.com/aedlegalcentre](http://www.facebook.com/aedlegalcentre)

**WARNING – a new era of cyber fraud exists!**

Accordingly please verify any email received from us requesting a transfer of monies to our bank accounts by calling us on (03) 9639 4333 before transferring the money. We will not use new bank account details supplied by you without calling you first.

"This email is intended solely for the person or organisation to whom it is addressed, and may contain secret, confidential or legally privileged information. If you have received this email in error or are aware that you are not authorised to, you MUST NOT use or copy it, or disclose its contents to any person. If you do any of these things you may be sued or prosecuted."



## About the F51 application form

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### Application for an order requiring a person to attend before the Commission

#### About orders requiring a person to attend before the Fair Work Commission

The [Fair Work Act 2009](#) allows the Commission to inform itself in relation to a matter before it by requiring a person to attend before the Fair Work Commission (the Commission).

A party can apply for an order requiring a person to attend.

The application must be accompanied by a draft order. The template for the draft order is attached to this form. A separate draft order should be provided for each person you seek to have attend before the Commission.

If the Commission makes the order, you must serve a signed copy of the order upon the person who is required to attend before the Commission and, unless the order has been published on the Commission's website, upon every other party in the matter.

For information about orders requiring a person to attend before the Commission see the [Practice note for Orders to attend and orders to produce](#) on the Commission's website.

#### Who can use this form

Use this form if you are a party to a matter currently before the Commission and you want the Commission to make an order for a person or persons to attend before the Commission.

#### Lodgment and service of your completed form

1. **Lodge** this application and draft order and any supporting documents with the Commission.

You can lodge your application by post, by fax or by email or in person at the [Commission's office](#) in your state or territory.

2. Unless the Commission orders otherwise, **as soon as practicable** after this application is lodged with the Commission, **serve a copy** of this application on:
  - the person who is to be required to attend before the Commission **and**
  - unless the application has been published on the Commission's website, every other party in the matter.

#### Where to get help

##### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make an application to the Commission
- how to fill out forms

- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au) also contains a range of information that may assist.

### Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

### Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person's lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person's behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person **or**
- a bargaining representative that is representing the person **or**
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

### Glossary of common terms

**Applicant** – This is the person or organisation that is making an application.

**Lawyer** – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

**Paid agent** – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**Party** – A party is an Applicant, Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** – The person or organisation responding to an application made by an Applicant.  
**Service** – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

## Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with the application for an order requiring a person to attend before the Commission. The information will be included on the case file, and the Commission may disclose this information to the other parties to this matter and to other persons. For more details of the Commission’s collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



**Remove this cover sheet** and keep it for future reference – it contains useful information

## Form F51 – Application for an order requiring a person to attend before the Commission

[Fair Work Act 2009](#), s.590(2)(a); [Fair Work Commission Rules 2013](#), rule 53 and Schedule 1

This is an application to the Fair Work Commission (Commission) under s.590(2)(a) of the [Fair Work Act 2009](#) for an order requiring a person to attend before the Commission.

### The Applicant



These are the details of the party that is making this application.

#### If the Applicant is an individual, provide the following details:

<b>Title</b>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input checked="" type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name</b>			
<b>Surname</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

#### If the Applicant is not an individual, provide the following details:

<b>Legal name</b>	Association of Employees with Disability (AED)		
<b>ACN (if a company)</b>			
<b>ABN (if applicable)</b>	80 353 375 261		
<b>Trading name or registered business name (if applicable)</b>	AED Legal Centre		
<b>Contact person</b>	Kairstien Wilson		
<b>Postal address</b>	PO Box 319, Collins Street West		
<b>Suburb</b>	Melbourne		
<b>State or territory</b>	VIC	<b>Postcode</b>	8007
<b>Phone number</b>	03 9639 4333	<b>Fax number</b>	
<b>Email address</b>	aedlegal@aed.org.au		

**Which party is the Applicant?**

- Applicant
- Respondent
- Other

If you answered **other** – Provide details.

AED is an interested party to the Fair Work Commission’s review of *the Supported Employment Services Award 2010* (the **Award**) (AM2014/286) that has made submissions and called evidence in, and for the purposes of, the review.

**The Commission matter that this application relates to**

These are the details of the main matter that the proposed order relates to.

<b>Matter name</b>	Supported Employment Services Award 2010
<b>Matter Number</b>	AM2014/286

**1. The Application****1.1 Who does the Applicant seek the attendance of?**

List the names of the person(s) you seek the attendance of.

Ms Kerrie Langford (“**Ms Langford**”)  
Ms Gerrie Mitra (“**Ms Mitra**”)

**1.2 Why does the Applicant seek the attendance of the person(s)?**

Using numbered paragraphs, explain why the attendance of each person is sought. This might include, for example, explaining the role of the person in your dispute and the nature of any evidence you expect the person may give.

- Ms Langford is the Head of Employment of National Disability Services (**NDS**).
- NDS, together with Australian Business Industrial and the NSW Business Chamber, has made submissions and proposes to call evidence in this review. Those submissions include a proposal for new classifications below the rates of pay prescribed for grade 1 and the national minimum wage as well as below the classifications the Full Bench has proposed in their “preferred approach” below Grades A and B.
- Ms Langford gave evidence to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Royal Commission**). Her evidence to that inquiry concerned matters of direct relevance to the functions being performed by this Commission. Her evidence concerned:



- (a) The role of, and functions performed by, NDS as a representative of employers covered by the Award, namely Australian Disability Enterprises
- (b) The diversity of these employers and work being done to change employment practices by those employers, including wage practices.
- (c) The features of ADE employment as well as the commercial pressures upon ADEs and the source of those pressures.
- (d) The impact of the National Disability Insurance Scheme (**NDIS**) and NDS' and its members responses to it.
- (e) The intersection between open employment and ADE employment, the effect of the NDIS on future labour mobility as between supported and open employment and these matters are to be addressed by ADEs.

4. Ms Mitra is the General Manager, Provider and Market Division, National Disability Insurance Agency (NDIA). The NDIA is the agency responsible for the NDIS.
5. Ms Mitra gave evidence to the Royal Commission about the NDIA price book in its application to employment for employees with a disability in ADE employment. Ms Mitra gave evidence about the NDIS, the kinds of funding available to employees with a disability in ADE employment and how that compared with funding available to the same cohort of employees in open employment. This is evidence that it is expected she can give to the Full Bench. Evidence of this kind is directly relevant to subjects such as the impact of labour costs for ADEs, the effect of the NDIS on future labour mobility as between supported and open employment and the level and degree of supervision for employees with a disability in ADE employment.

### 1.3 How will the attendance of the person(s) assist the Commission in reaching a decision?



Using numbered paragraphs, explain how the attendance of the person(s) could assist the Commission in deciding the main matter.

1. The NDS in conjunction with the ABI and NSW Chamber has proposed in submissions filed on 8 July 2020 a new minimum wages structure. These organisations have also made submissions about the nature of ADEs and ADE employment for employees with a disability in responding to the “preferred approach” advanced by the Fair Work Commission.
2. The AED as well as the ACTU and the United Workers Union have made submissions in favour of a wages position that harmonizes minimum wages for employees with a disability in ADE employment and employees with a disability in open employment.
3. The evidence given by Ms Langford to the Royal Commission is evidence that directly relates to the matters referred to in paragraphs 1 to 2 above. That evidence included evidence about what the NDS and its members are doing and intended to do in supported employment in relation to minimum wages and in response to the NDIS.
4. The evidence given by Ms Mitra to the Royal Commission directly related to how NDIS funding is provided to fund personal supports required by individual employees with a disability to facilitate their ADE employment; how that funding is determined and what kinds of funding is available. This evidence is directly relevant to labour costs; the level and degree of employee supervision as well as the intersection of ADE employment and open employment.
5. Despite the submission to which the NDS is a party, Ms Langford has not been called as a witness by NDS.
6. The NDIA has not participated in this review. Insofar as it is relevant, the Commonwealth has not called any witnesses.



You must complete the draft order attached to this form for each person you seek the attendance of.



### Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.

### Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

<b>Signature</b>	
<b>Name</b>	Kairstien Wilson
<b>Date</b>	27/07/2022
<b>Capacity/ Position</b>	Principal Solicitor of AED Legal Centre
	If you are not the Applicant and are completing this form on the Applicant's behalf, include an explanation of your authority to do so in the <b>Capacity/Position</b> section above.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**



FairWork  
Commission

# DRAFT ORDER

*Fair Work Act 2009*

s.590(2)(a) – Order requiring a person to attend before the Fair Work Commission

## **4 yearly review of awards – *Supported Employment Services Award 2010***

(AM2014/286)

Commission Matter No: AM2014/286

[*Insert the Commission matter number.*]

VICE PRESIDENT HATCHER

DATE

**TO:** Ms Kerrie Langford

National Disability Services  
33 Thesiger Court, DEAKIN, ACT, 2600

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to attend the Commission at the following time, date and place:

Time: 10:00  
Date: 16 August 2022  
Place: NSW Fair Work Commission Office  
Level 11, Terrace Tower, 80 William Street  
East Sydney, NSW, 2011

And so from day to day until the matter is concluded or until you are excused from further attendance, to give evidence in the hearing of matter AM2014/286 – *Re Supported Services Award 2010*.

Member

**Note:**

- This order has been issued at the request of AED Legal Centre.
- You can apply to have this order set aside or varied.

# DRAFT ORDER



*Fair Work Act 2009*

s.590(2)(a) – Order requiring a person to attend before the Fair Work Commission

## **4 yearly review of awards – *Supported Employment Services Award 2010***

(AM2014/286)

Commission Matter No: AM2014/286

[*Insert the Commission matter number.*]

VICE PRESIDENT HATCHER

DATE

**TO:** Ms Gerrie Mitra

National Disability Insurance Agency  
GPO Box 700, Canberra ACT 2601

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to attend the Commission at the following time, date and place:

Time: 10:00  
Date: 16 August 2022  
Place: NSW Fair Work Commission Office  
Level 11, Terrace Tower, 80 William Street  
East Sydney, NSW, 2011

And so from day to day until the matter is concluded or until you are excused from further attendance, to give evidence in the hearing of matter AM2014/286 – *Re Supported Services Award 2010*.

Member

**Note:**

- This order has been issued at the request of AED Legal Centre.
- You can apply to have this order set aside or varied.
- If you have any queries in relation to this order please contact the associate to Vice President Hatcher on [chambers.hatcher.vp@fwc.gov.au](mailto:chambers.hatcher.vp@fwc.gov.au).
- If you have any queries in relation to this order please contact the associate to Vice President Hatcher on [chambers.hatcher.vp@fwc.gov.au](mailto:chambers.hatcher.vp@fwc.gov.au).