

Senate Education, Employment and Workplace Relations Committee

INQUIRY INTO THE *FAIR WORK BILL* 2008

**Submission of the Queensland Nurses' Union of Employees
8th January 2009**

Contents

- 1 Introduction**
- 2 General comments on the Bill**
- 3 About the Queensland Nurses Union**
- 4 Submissions on Specific Areas of the Bill**
 - 4.1 Section 238 Scope orders**
 - 4.2 Section 387 Criteria for considering harshness etc**
 - 4.3 Approval process for agreements and the relationship with the operative date of same (s182)**
 - 4.4 Section 263 When FWA must make a special low-paid workplace determination – additional requirements**
 - 4.5 Section 384 Period of employment**
 - 4.6 Transitional matters**
- 5 Conclusion**

1. Introduction

- 1.1 In keeping with the timetable of the Committee's inquiry this submission will focus on some discrete areas of the Bill that in our respectful submission will give rise to some confusion and difficulty if left unamended or unclarified.
- 1.2 Prior to going to those areas however this submission provides some broad comments on how the Bill and its implementation will be viewed by the nursing workforce (the nursing workforce includes midwives and wherever the terms nurse/nurses/nursing are used in this submission it is intended to include midwife/midwives/midwifery). The Queensland Nurses' Union (QNU) is well placed to make these comments as the section of this submission on the QNU sets out.
- 1.3 The QNU has had the benefit of reading the submissions of our federal body, the Australian Nursing Federation (ANF) and also the state and federal peak organisations the Queensland Council of Unions (QCU) and the Australian Council of Trade Unions (ACTU). We support and endorse those submissions. In addition to the matters raised elsewhere in this submission we in particular draw the Committee's attention to the following:
 - The ACTU's and QCU's submissions on the grounds to be considered in Modern Award Reviews
 - The ACTU's submissions on access to confidential information during a bargaining period
 - The ANF's submissions on Pattern Bargaining
 - The QCU's submissions on Definition of Service (paragraph 56 and following)
 - The QCU's submissions on Unfair Contracts (paragraph 159 and following)
 - The QCU's submission on Equal Remuneration (paragraph 136 and following)

- 1.4 We also note that on 19 December the Award Modernisation Full Bench of the Australian Industrial Relations Commission issued a comprehensive decision on award modernisation and in particular the making of priority modern awards. A number of matters arise out of that decision of relevance to the Committee's inquiry however we do not seek to address those in this submission. We also note that the same Full Bench is due to hand down its decision on exposure drafts of modern awards for the health and welfare sectors on 23 January. It is likely we will have comments to make regarding that decision and will be in a position to do so at the Brisbane hearing for this inquiry on Tuesday 27 January.
- 1.5 Finally, we affirm that we are happy to provide such further assistance to the Committee as we are able upon request and will also have officials available to attend the Brisbane hearing on 27th January.

2. **General comments on the Bill**

- 2.1 The 35 000 members of the QNU and, in our submission the 280 000 strong Australian nursing workforce will judge the federal government's Fair Work legislation on whether it delivers a fair go for nurses in three key areas
- a) The capacity for the legislation to address pay equity issues for nurses through the maintenance and recognition of their unique occupational identity.

The legislation must provide a mechanism for addressing gender based pay equity issues.

The legislation must provide a mechanism for addressing pay differentials for nurses working in different sectors and different states.

Such mechanisms will only be effective for nurses if the legislation ensures the ongoing recognition of nursing occupational identity.

- b) The reach of the legislation must be such as to provide nurses with a straightforward process to deal with a wide range of matters related to their employment. Nursing work is complex, physically and emotionally demanding, and has been and continues to intensify.

The legislation must enable nurses to negotiate for and seek agreement on all their terms and conditions of employment, on the way their work is done including measures to address workloads, and on their collective rights.

The legislation must provide access to a tribunal to settle disputes about the full range of nursing work, if necessary by arbitration.

- c) The legislation must provide adequate and effective remedies for nurses who are treated unfairly in the workplace.

Nursing is a highly regulated occupation. The legislation needs to provide for remedies where unscrupulous employers seek to exploit that regulation for disingenuous reasons.

Nurses require effective and efficient remedies from unfair and unlawful termination.

Nurses require effective and efficient remedies where their settled rights, including those relating to 'process' issues, are breached by their employer.

- 2.2 How these key areas will resolve for nurses under the Fair Work legislation is yet to be seen. At time of writing the long history of nursing occupational awards is under challenge. While the QNU commends the government for re-establishing a comprehensive award safety net, the Committee should not underestimate the significance nurses place on maintaining their occupational awards.
- 2.3 The QNU has made submission to the House of Representatives Standing Committee on Employment and Workplace Relations 'inquiry into pay equity and associated issues related to increasing female participation in the workforce' (submission 115) and commends it to the Committee.
- 2.4 The QNU welcomes the broad thrust of the proposed bargaining regime and in particular what appears in our view to be a capacity to address the inequities that have arisen as a consequence of the historical deficiencies in facilitative bargaining legislation to date. Those inequities have been keenly felt in areas reliant upon government funding where the government has not been the employer, for example aged care.
- 2.5 The provisions relating to good faith bargaining, multi enterprise agreements, the intervention of Fair Work Australia (FWA) as set out in Division 8 of Chapter 2 Part 2-4, the provisions relating to low-paid bargaining in Division 9 of Chapter 2 -4 and the capacity for workplace determinations as set out in Part 2-5 of Chapter 2 would appear on their face to give succour to nurses' concerns however ultimately it will be how these provisions are tested and interpreted by the tribunals that they will be measured.
- 2.6 Likewise, the extent to which the legislation allows nurses to bargain 'at large' about matters of concern to them is welcome. The absurd prohibited content rules should have died with the election of the federal labor government and it is a frustration to our members and to many of the employers we deal with that they remain in place even now. It is to be hoped the tribunals take an expansive view of the new provisions relating to content. We note and support the ACTU's submissions on 'permitted matters.'
- 2.7 It is to be hoped that the new regimes for seeking remedy for unfair and unlawful termination of employment are interpreted effectively by the tribunals. Like others we are concerned about the 7 day limitation period for making application for relief in relation to unfair dismissals.

2.8 Our principal position is that there should be a general access to arbitration on matters in dispute between an employee, or group of employees and their employer. To the extent this access is limited in the *Fair Work Bill* its effectiveness to properly assist employees and employers is diminished. The ACTU addresses this issue in its submission on dispute resolution.

2.9 FWA should be able to make orders in relation to breaches of settled rights, particularly where they relate to process type matters (for example in relation to the operation of the consultation term as provided for in section 205).

3. About the QNU

3.1 The QNU is the principal health union operating in Queensland and is registered in that state. The QNU is also registered in the federal jurisdiction as a transitionally registered association. In addition the QNU operates as the state branch of the federally registered Australian Nursing Federation. The QNU represents the largest number of women of any union in Queensland.

3.2 The QNU covers all categories of workers that make up the nursing workforce in Queensland: registered nurses, enrolled nurses and assistants in nursing, be they employed in the public sector or the private and not-for-profit health sectors. Our members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management.

3.3 Membership of the QNU has grown steadily since its formation in 1982 and is now approximately 35,000 and still growing. Like the nursing profession as a whole, the overwhelming majority of our members are female (93%).

3.4 The QNU has a democratic structure based on workplace or geographical branches. Approximately 250 delegates are elected from the branches to attend the annual QNU conference which is the principal policy making body of the union. In addition to the annual conference the QNU has an elected council and an elected executive, which in turn have decision-making responsibilities between conferences. Council is the governing body of the union.

3.5 QNU members in the public sector are employed under a state certified agreement, namely the *Nurses (Queensland Health) Certified Agreement (EB6) 2006*. They were previously in the federal system but this changed with the advent of Work Choices. In the private sector they are mostly employed under a variety of federal instruments. Since 1994 when no enterprise agreements were in place covering nursing workers, the QNU has become party to over 200 enterprise agreements which cover a diverse range of health facilities and other non-health establishments where nursing services are provided (eg schools, local councils, prisons and factories). We therefore have a clear and comprehensive understanding of the complexity of contemporary health service delivery as well as the diversity of locations where health services are delivered.

- 3.6 There are particular and significant challenges confronting nursing and the health system at present relating to the national and international shortage of nurses. No other occupational group comes close to rivalling the depth and breadth of skills shortage in nursing at present.
- 3.7 The QNU has over many years placed a strong emphasis on researching the circumstances, conditions and attitudes of our members and we draw on that research and our democratic and participatory structures in formulating and advancing this submission and in our advocacy elsewhere. For example, the QNU has recently undertaken its third detailed member issues survey – Your work, your time, your life. The union commissioned Professor Desley Hegney and her team at the University of Queensland to undertake this independent research of a random sample of 3000 QNU members across the public, aged care and private hospitals sectors. This research was first undertaken in 2001 and was repeated in 2004 and 2007 and a number of detailed comparative reports and articles have been generated (including in peer reviewed international journals) across a wide variety of issues. The researchers have analysed the data and prepared a report. The findings were presented at the 2008 QNU Annual Conference. It is therefore with confidence that we assert that the large and important section of the workforce that is nursing support the views expressed in this submission.

4. Submissions on specific areas of the Bill

This submission will now focus on some discrete areas of the Bill that in our respectful submission will give rise to some confusion and difficulty if left unamended or unclarified.

4.1 Section 238 Scope Orders

- 4.1.1 Section 238 provides that FWA may make orders in relation to the scope of an enterprise agreement the effect of which would be to determine the group of employees to be covered by a particular agreement.
- 4.1.2 Section 238(4) sets out the criteria upon which FWA must be satisfied in order to make a scope order.
- 4.1.3 At time of writing this submission the Award Modernisation Full Bench of the AIRC has not determined the scope of modern awards for the health and welfare industry and the issue has been one of some controversy.
- 4.1.4 It has also been the QNU's experience in enterprise bargaining that from time to time differences have arisen between an employer and their employees over the proposed scope of an enterprise agreement

For example on 16 September 2008 the QNU filed a notification of industrial dispute in the Queensland Industrial Relations Commission (D/2008/131) concerning enterprise bargaining negotiations with the Salvation Army Australia Eastern Territory Social Work (an employer who asserted at the time they were not a constitutional corporation, hence the jurisdiction. They have subsequently reviewed that position). The issue in dispute was a claim by the employer that the scope of the proposed agreement should be such as to cover all employees. Nursing employees were vehemently opposed to this claim and organised petitions in addition to raising their concerns in other forums and through their union. They sought a nursing only agreement. Negotiations stalled as a consequence. The Commission's assistance was sought to settle the disagreement over scope. Clearly the employees' views were a significant factor in this example and ultimately the employer conceded on the issue.

4.1.5 It is respectfully submitted that FWA should be required to take into consideration the views of the employees affected by any proposed scope order before making such an order. This could be achieved by amending Section 238 (4) by adding the following:

(e) in determining what is reasonable in all the circumstances as provided for in subsection (4)(d) FWA is to take into consideration the views of the employees affected by the proposed scope order

We note this is consistent with the position advanced by the ACTU in their submissions on Bargaining Process

4.2 Section 387 Criteria for considering harshness etc.

4.2.1 Section 387 currently provides:

In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, FWA must take into account:

...

(d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; ...

[Emphasis added]

4.2.2 There would not appear to be a definition of 'support person' in the unfair dismissal provisions or elsewhere in the Bill. It has been the QNU's experience that the term has given rise to disputation with employers. The disputation has been around the role that should be taken by the 'support person' in any discussions relating to dismissal. We have found that employers have sought to limit the 'support person' to personal support only. The 'support person' has been prevented from speaking on the issues the subject of the dismissal discussions or viewing relevant documents.

By way of example Attachment 1 to this submission is an exchange of correspondence between the QNU and a large employer RSL Care as well as correspondence from the employer to an employee on the role of a 'support person.' We have deleted the identifying details of individuals involved in the interests of confidentiality but can provide them on a confidential basis should the Committee wish. It should be further noted that the employee was dismissed and the dismissal was contested in the AIRC. One of the grounds raised on behalf of the applicant was the limitations placed on the 'support person' and consequent denial of natural justice. The matter was settled on a confidential basis prior to proceeding to arbitration. (ATTACHMENT 1)

4.2.3 For completeness, the terms of section 387(d) can be compared with how the matter is dealt with in the Small Business Fair Dismissal Code. In the Code it states:

In discussions with an employee in circumstances where dismissal is possible, the employee can have another person present to assist. However, the other person cannot be a lawyer acting in a professional capacity

The term 'support person' is not used however there is a clear intention to preclude legal representation in dismissal discussions between a small business employer (less than 15 employees) and one of their employees. This would appear to be consistent with the government's policy intention of providing some special circumstances for small businesses.

4.2.4 No such policy consideration applies to larger employers however. It is our submission that section 387 (d) should be amended to delete the term 'support person' and replace it with 'representative.' Section 387 (d) would therefore read:

(d) any unreasonable refusal by the employer to allow the person to have a representative present to assist at any discussions relating to dismissal; ...

4.2.5 The term 'representative' has a much better understood meaning in industrial relations and the role of and obligations on representatives is clearly understood. To leave the section unamended would be to place even lesser obligations on larger employers (based on their interpretation) to provide a fair go all round than those required of small employers under the Code.

4.3 Approval process for agreements and the relationship with the operative date of same (s182)

4.3.1 Section 182 sets out when an enterprise agreement is made and essentially states (leaving aside Greenfields agreements) that an enterprise agreement is made upon approval by a majority of employees.

4.3.2 Section 186 provides that FWA must approve an enterprise agreement subject to it meeting certain requirements

4.3.3 Paragraph 767 and 768 of the *Fair Work Bill 2008 Explanatory Memorandum* state that:

...An enterprise agreement that has been made in accordance with clause 182 does not have any legal effect until it is approved by FWA. Therefore, an enterprise agreement cannot have effect at general law.

768. It is intended that FWA will usually act speedily and informally to approve agreements, with most agreements being approved on the papers within 7 days. This period has not been legislated, however, ...

4.3.4 The QNU has for some time been concerned about the delays in approval for Enterprise Agreements.
At time of writing we are party to ten agreements that have been lodged and have passed the current No Disadvantage Test (NDT).

In addition we are party to a further three agreements that were lodged prior to December 2008 and four that were lodged in December 2008 that are yet to have the NDT applied.

Of the ten agreements to have the NDT applied the following delays were experienced:

168 days was the longest length of time between lodgement and passing the NDT and this occurred only after a letter being sent by the QNU to the Workplace Authority

Seven days was the shortest length of time between lodgement and passing the NDT.

60 days was the average length of time between lodgement and passing the NDT.

4.3.5 In addition to the uncertainty, QNU members have been further disadvantaged by delays in the approval of agreements. This is in large part as a consequence of clauses linking the flow of benefits provided for in an agreement to the date of approval.

By way of example, in the case of the Holy Spirit Care Services (Brisbane) Ltd Union Collective Agreement (Agreement No. 085056584) clause 1.4 provided that:

This Agreement shall operate from the first full pay period commencing after seven days after approval from the Workplace Authority that the document has passed the No Disadvantage Test, ...

The agreement, a first agreement for this organisation, provided for employees to transition from the relevant NAPSA classifications to an amended classification structure that would have the effect of pay increases.

The agreement provided for further pay increases from 1 December 2008

The Declaration Receipt from the Workplace Authority specified that the agreement was lodged on 26 June.

The Notice of Approval of the agreement was issued on 17 November 2008.

As a consequence employees did not receive the pay increases provided for until some five months after they voted to approve the agreement.

4.3.6 In our submission, if an agreement is not to be approved within the seven days suggested in the Explanatory Memorandum then FWA should be required to call an urgent hearing of the parties to address the reasons for the delay and any consequent disadvantage to employees. If no legislative provision is made for such a requirement then some other provision, such as regulation, should be made.

4.4 Section 263 When FWA must make a special low-paid workplace determination – additional requirements

4.4.1 Section 263 (3) provides that:

FWA must be satisfied that no employer that will be covered by the relevant determination is, or has previously been, covered by an enterprise agreement, or another workplace determination, in relation to the work covered by the employees who will be covered by the relevant determination.

4.4.2 It is submitted that the government must ensure that access to FWA workplace determinations is not precluded for organisations that have had pre FWA enterprise agreements (particularly really old ones that have been surpassed by the award or NAPSA) as a consequence of this provision.

4.4.3 The QNU is party to a number of enterprise agreements that, the agreement notwithstanding, the requirements under FWB sections 262 and 263(1)&(2) for a special low-paid workplace determination would be met. These agreements are generally old ones made under state industrial laws but also include some recent agreements made under the *Workplace Relations Act 1996* (WRA) subsequent to the operation of the Work Choices amendments becoming operable in March 2006. Some examples are below:

Tully Nursing Home Inc – Queensland Nurses Union Certified Agreement 1999 – CA157 of 2001

Sylvan Woods Nursing Home Nursing Staff Certified Agreement 1999 – CA310 of 1999

Mercy Aged Care Services – Rockhampton Diocese - Certified Agreement – CA579 of 1999

Lourdes Home for the Aged – QNU – Certified Agreement 1997

Carinya Home for the Aged Nursing Staff Certified Agreement 1999 – CA446 of 1999

Canossa Residential Services Certified Agreement 2005 – CA/2005/490

Beth Eden Aged Persons Home Nursing Staff Certified Agreement 2000 – CA265 of 2000

St Paul de Chartres Residential Aged Care – Australian Nursing Federation – Union Collective Agreement 2007 – Agreement No. 071495312

In the case of the state certified agreements listed above the rates of pay provided for in those agreements have been overtaken by both state award and more recently NAPSA rates.

In the case of agreements such as the one applying to St Paul de Chartres the agreement is essentially the NAPSA with the rates of pay being no greater than 2% above NAPSA rates.

4.4.4 Notwithstanding the fact of agreements with a number of employers having been made at some point, the rates of pay for employees working under those agreements have still declined in real terms over the life of the *Workplace Relations Act* 1996. It is submitted that these employers would still meet the requirements as set out in section 262 (3),(4)&(5) of the Bill.

4.4.5 In addition, given the restoration of balance in the bargaining process provided by the good faith provisions in the Bill it is entirely feasible that FWA would likely be able to also be satisfied in relation to 262(2). Therefore it needs to be made absolutely clear that section 263(3) only refers to enterprise agreements made after the *Fair Work Act* is proclaimed.

4.5 Section 384 Period of employment

4.5.1 The QNU supports and endorses the submissions of the ANF on the unfairness of the Bill's current provisions for transferring employees. We also note the QCU's submissions. Effectively the Bill strips a transferring employee of their protections from unfair dismissal notwithstanding that they may have had many years of diligent service in their position. In our respectful submission section 384(2)(b) should at most only apply to casual employees.

4.5.2 The QNU agrees with the ANF that the new employer should not be able to unilaterally decide that a transferring employee, often with years of prior service, should have no unfair dismissal rights during their first six months with the new employer. If the old employer would have been required to dismiss the employee fairly, the new employer should be required to do the same.

4.5.3 We further note that while the ANF considers that the new employer should be required to recognise continuous service with previous employers it also suggests that at the most, only Fair Work Australia should be able to decide that prior service should not be recognised (not the employer unilaterally). The QNU supports this sensible proposal.

4.6 Transitional Matters

4.6.1 The QNU is concerned that there are no further delays in restoring the balance for employees that was stripped away under Work Choices and its predecessor legislation. We therefore raise in this submission the circumstances of our members who are either covered by inferior WRA collective agreements that would not meet the Better Off Overall Test (BOOT) and other requirements of the FWB in relation to bargaining; or who are covered by 'Employee Collective Agreements' with the consequent restriction on freedom of association rights including their right to be represented in the workplace; or both.

4.6.2 We draw the Committee's attention to the submissions of the ANF and the examples therein.

4.6.3 In Queensland some employers have engaged in dubious practices with the objective of locking out the QNU through the mechanism of an employee collective agreement.

Mater Townsville

Mater Townsville is medium sized regional private hospital with approximately 400 nursing employees. In mid-2006 the employer issued a non-union agreement for employees to approve by a balloting process referred to as an "objection ballot". The employees were not provided with an opportunity to negotiate any terms of the agreement. The "objection ballot" process involved an employee lodging an objection which they could only do after providing their identifying details and it would be counted as a no vote. Those who did not vote at all would be counted as a yes. The Office of the Employment Advocate intervened but the employer then proceeded to use a "clipboard" balloting process. This was a process whereby an individual appointed by the employer went around the hospital and asked individual employees if they wanted to approve an agreement and get a pay rise. When a majority of yes votes were received the employer deemed the agreement approved. During the very limited timeframe between issuing the agreement and the conclusion of the ballot period the members at the facility had nominated the QNU as their bargaining agent but the employer just held a cursory meeting and refused to negotiate on any terms of the agreement. The Workplace Ombudsman found that the employer was in breach of the Act but rather than prosecuting and/or deeming the agreement void a termination ballot was held and a majority of employees voted to retain the agreement rather than fall back on the five minimum conditions provided for in the WRA.

When the agreement came up for renegotiation in 2008 the employer again elected to issue a non-union agreement. Over 190 nursing employees signed a petition requesting the employer negotiate a union collective agreement but the employer refused. The employer refused to provide QNU access to the site and the QNU had no right of entry due to the pre-existing non-union agreement. In a secret ballot a narrow majority of employees refused to accept the non-union agreement. After an intensive campaign by the employer the non-union agreement was reissued and accepted.

- 4.6.4 In our respectful submission an employee organisation should be able to make application under FWB section 183 to be covered by an existing employee collective agreement made under the WRA, thus ensuring the full gambit of rights and obligations provided for in FWB Chapter 3 apply to employees, employers and the employee organisation in relation to the agreement and workplace/s to which it applies. Such application should be able to be made from 1 July 2009.
- 4.6.5 In addition, provision should be made to require FWA to amend a pre FWA agreement in order to ensure it meets the BOOT and other requirements of the FWB, for example section 205, or in the alternative, terminate the agreement.

5 Conclusion

The QNU has made these submissions in the absence of transitional legislation and before the award modernisation process has been concluded. Notwithstanding this we have made solid suggestions and comment founded on our direct experience and the established views of our members. We commend the submission to the Committee and look forward to participating further in the inquiry.

**Senate Education, Employment and
Workplace Relations Committee**

**INQUIRY INTO THE FAIR WORK BILL
2008**

Attachment 1



HomeCare
Retirement Living
Residential Care

QUEENSLAND NURSES UNION
FILE INFORMATION

Date: 18-4-08
File Number: 1014226
Doc Number: 08/0044221

15 April 2008

PRIVATE & CONFIDENTIAL



RECEIVED
17-4-08

Dear

I refer to our meeting of 28 March 2008 in which we discussed and gave you an opportunity to respond to the following allegations:

- Elder abuse
- Harassment and bullying allegations made by residents and employees
- Inappropriate work conduct with your superior
- Appropriate / Inappropriate removal and destruction of medication error and incident reports
- Lack of clinical governance in your care coordinator role

A record of interview is attached for your reference.

The information in relation to this matter has been reviewed, including your responses. It is my view that your actions are such that they may warrant **terminating your employment with RSL Care**. However, no final decision will be made until you have had a further opportunity to respond.

Accordingly, you are requested to attend a further meeting in which you will be requested to show cause why you should not be **dismissed from employment**. This meeting has been scheduled for **3pm on 22 April 2008** in the Library at the RSL Club Quay Street Bundaberg. Present at this meeting will be



Once again you are encouraged to bring a support person to this meeting. The role of the support person is to assist the party, not to represent the party or to act as an advocate. If the support person is an employee of RSL Care, this person will not be in receipt of any payments by RSL Care and agrees to carry out this role in a voluntary capacity.

This matter must continue remain confidential and you are therefore directed not to discuss this matter with other staff members, residents or their relatives. Should you fail to observe this direction, disciplinary action may be initiated.

Should you require assistance throughout this process please feel free to contact RSL Care's Employee Assistance Program on 1300 361 008. This service provides confidential counselling and support to staff and their immediate families.

Yours sincerely



RSL Care – Fairways 59 Hanbury Street, Bundaberg, Qld 4670
T 07 4155 8222 F 07 4154 1488 W www.rslcare.com.au
R.S.L. (Qld) War Veterans' Homes Limited (RSL Care) ABN 90 010 488 454



HomeCare
Retirement Living
Residential Care

30 April 2008

PRIVATE & CONFIDENTIAL

[REDACTED]

Dear [REDACTED]

I refer to your request for supporting documentation dated 24 April 2008; please find following RSL Care's response:

* [Firstly, I will address your enquiry regarding access to a copy of our policy on the role of a support person. RSL Care's position is unchanged regarding the role of a support person and the role of the support person is clarified in the letter/s we send to employees as part of the performance management process, which you have received.] *

With respect to accessing confidential resident documentation, RSL Care will agree to the following:

- The requested documents will be made available to you at Fairways Retirement Community, Bundaberg on the Thursday 08 May 2008 between 05:30pm and 06:30pm;
- You may only view these documents while in the presence of a Corporate Office Representative;
- You may identify (using post-it notes) the areas you wish RSL Care to consider as evidence to support your response to the related allegations (RSL Care will provide the post-it notes for your use);
- You are encouraged to bring a support person. However, due to the confidential nature of the requested documentation, the support person may only accompany you to Fairways Retirement Community, Bundaberg but will not be given access to this private viewing area or requested information. Furthermore, the role of the support person is to assist you through the process, not to represent you or to act as an advocate. If the support person is an employee of RSL Care, this person will not be in receipt of any payments by RSL Care and agrees to carry out this role in a voluntary capacity.

* [] *

With regards to your request to access statements provided by relevant parties to the investigation of the allegations against you, it is RSL Care's view that these documents are confidential. As a result of the investigation into the allegations raised, the details of the allegations that you are required to respond to have been outlined in my letter to you dated 14 March 2008. Hence, the confidential statements gained through the investigation process will not be provided.

RSL Care - Fairways 59 Hanbury Street, Bundaberg, Qld 4670
T 07 4155 8222 F 07 4154 1488 W www.rslcare.com.au
R.S.L. (Old) War Veterans' Homes Limited (RSL Care) ABN 90 010 498 454

QUEENSLAND
Nurses' Union

The union for nurses and midwives

IN ASSOCIATION WITH AUSTRALIAN NURSING FEDERATION QLD. BRANCH

ADDRESS ALL CORRESPONDENCE TO THE SECRETARY, G.P.O. BOX 1289, BRISBANE, Q. 4001.



Just Rewards for Professional Care

A.B.N. 84 382 908 052

IN REPLY PLEASE QUOTE:

All enquiries regarding this correspondence should be directed to: _____

6 May 2008

Mr [REDACTED]
[REDACTED]
RSL Care
301 Wickham Street
Fortitude Valley Qld 4006

By Facsimile: 3252 5455

Dear Mr [REDACTED]

Re: Representation of Members in Performance Management Processes

We are writing to you concerning, what appears to be, a misunderstanding in respect of the role of QNU officials in representing members who are the subject of the RSL Care's Performance Management Process.

It appears that there may be a view amongst some of your Lifestyle Managers that the role of QNU officials in representing its members is in some way limited to that of "support person" and, as a consequence, there are restrictions on "representation", "advocacy" and access to information.

A recent example has arisen in respect of QNU member [REDACTED], a copy of relevant correspondence to [REDACTED] from your organisation is attached.

As you would appreciate, the QNU is able to fully represent its members, advocate on their behalf and, as part of those responsibilities, is able to have full access to all information relevant to the matters the subject of the Performance Management Process.

To restrict in any way the role of QNU officials in their representation and advocacy on behalf of members is, as you would appreciate, a diminishing of fair process and denial of natural justice.

Queensland Nurses' Union of Employees, 2nd Floor QNU Building, 56 Boundary Street, West End, Brisbane, 4101.

Brisbane Office:
G.P.O. Box 1289, BRISBANE 4001
Phone: (07) 3840 1444
Fax: (07) 3844 9387
e-mail: qnu@qnu.org.au Website: www.qnu.org.au

Cairns Office:
P.O. Box 846N, NORTH CAIRNS 4870
Phone: (07) 4031 4466
Fax: (07) 4051 6222
e-mail: qnucairns@qnu.org.au

Townsville Office:
P.O. Box 1751, TOWNSVILLE 4810
Phone: (07) 4772 5411
Fax: (07) 4721 1820
e-mail: qnutsvle@qnu.org.au

Toowoomba Office:
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Phone: (07) 4659 7200
Fax: (07) 4639 5052
email: qnutwmba@qnu.org.au

Rockhampton Office:
P.O. Box 49, ROCKHAMPTON 4700
Phone: (07) 4922 5390
Fax: (07) 4922 3406
e-mail: qnurocky@qnu.org.au

Bundaberg Office:
P.O. Box 2949, BUNDABERG 4670
Phone: (07) 4132 8411
Fax: (07) 4151 6066
email: qnuberg@qnu.org.au

2.

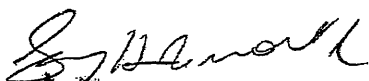
Queensland Nurses' Union of Employees

Could you please advise the relevant managers within RSL Care of their employees' full rights to QNU representation and confirm that you have done so by way of reply to this correspondence.

As you would appreciate, the QNU is able to have recourse in the Australian Industrial Relations Commission should there be any confusion over this matter.

Should you have any enquires, please contact Steve Ross on (07) 3840 1435.

Yours faithfully



GAY HAWKSWORTH

Secretary

cc: QNU Regional Offices



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Corporate Services
301 Wickham Street
Fortitude Valley, Qld 4006
Phone 07 3251 6200
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RSL Care AUS 99 010 400 454

19 May 2008

COPY

FAX

Gay Hawksworth
Secretary
Queensland Nurses Union
GPO Box 1289
BRISBANE QLD 4001

QUEENSLAND NURSES UNION FILE INFORMATION	
File Number	ORG-4301-01
Date	21 MAY 2008
Doc Number	08/05 8047
Author Name	Steve

cc. Rockhampton

Dear Ms Hawksworth

I acknowledge and refer to your letter dated 6 May 2008, where you seek a formal confirmation by RSL Care in relation to what you see as a misunderstanding in respect to the role of support persons, specifically the role of QNU Officials representing their members.

RECEIVED
23 MAY 2008

A support persons role is to observe and support the employee, and that they are not there as the employee's representative or advocate. RSL Care as the Employer has the right to counsel their staff on performance or workplace issues. The sole purpose of interviews, relating to performance management cases, is to identify evidence and, where possible, matters of facts; to assist RSL Care in determining, on the balance of probabilities, whether the allegation(s) is substantiated.

Natural Justice is afforded in how the process is conducted, not in having an advocate to speak for them. Natural Justice is afforded to employees of RSL Care by way of the 2 principles; being:

- Fair Hearing, and
- Rule of No Bias

The 'fair hearing' rule is applied by the process being followed and affording the employee the opportunity to present information relevant to the matter(s) at hand and the 'rule of no bias' is applied through recommendations being presented to Corporate Services for a final determination. If at the end of the process the employee feels that they have not been afforded a proper process, then there are other channels open to the employee or the Union to pursue.

Evident in the [redacted] case that you make reference to, RSL Care believes its actions in providing access to the information concerning this performance management process was more than appropriate given the nature of the request. We believe the process we adhered to for [redacted] has been fair and that she has been provided the appropriate natural justice.

As you know the Aged Care Act clearly defines a residents rights and one of those rights is to resident confidentiality. Penalties exist in relation to breaches of resident confidentiality, and therefore no person would be provided with this information unless they are directly involved in managing the care of that resident, which was the case for [redacted] in her clinical co-ordination role at Bundaberg Fairways.

I trust this correspondence clarifies RSL Care position and if you require further information and clarification please contact me on (07) 3251 5428.

Yours sincerely





cc: Steve Ross - Industrial Officer, QNU



**HomeCare
Retirement Living
Residential Care**

21 May 2008

PRIVATE & CONFIDENTIAL

[REDACTED]
2 [REDACTED]
[REDACTED]

Dear [REDACTED]

I refer you to our meetings of:

- **Friday, 28 March 2007** in which you were provided an opportunity to respond to the outlined allegations;
- **Tuesday, 22 April 2008** in which you were provided an opportunity to show cause why you should not be dismissed from employment in relation to allegations; and
- **Thursday, 08 May 2008** to review the documentation you requested and provide any further information you wished to be considered.

All information in relation to this matter has now been reviewed, including your response provided to RSL Care on 28 March and 13 May 2008.

Based on the information presented at these meetings, and a review of the facts, we wish to advise you of the final outcome. Accordingly, you are requested to attend a meeting in which you will be presented with this information. This meeting has been scheduled for **04:30pm on Friday, 23 May 2008 at Lifestyle Manager's office, Fairways Retirement Community, Bundaberg**. Present at this meeting will be [REDACTED], Lifestyle Manager and [REDACTED] Human Resource Officer.

Once again you are encouraged to bring a support person to this meeting. The role of the support person is to assist the party, not to represent the party or to act as an advocate. If the support person is an employee of RSL Care, this person will not be in receipt of any payments by RSL Care and agrees to carry out this role in a voluntary capacity.

This matter must continue remain confidential and you are therefore directed not to discuss this matter with other staff members, residents or their relatives. Should you fail to observe this direction, disciplinary action may be initiated.

Should you require assistance throughout this process please feel free to contact RSL Care's Employee Assistance Program on 1300 361 008. This service provides confidential counselling and support to staff and their immediate families.

Yours sincerely

[REDACTED SIGNATURE]

QUEENSLAND NURSES UNION FILE INFORMATION	
Date	22.5.08
File Number	1014246
Doc Number	08/005903