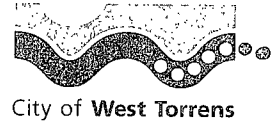
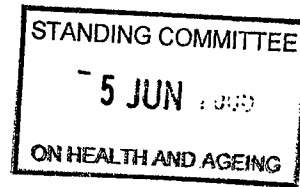


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1 June 2006

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Standing Committee on Health & Ageing
House of Representatives
PO Box 6021
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CANBERRA ACT 2600



Submission No. 133

AUTHORISED: 21/6/06
KS

Dear Kai

Committee's Invitation to Supply Additional Information

During its recent deliberations in Adelaide, the Hon Alex Somlyay MP (Chair) suggested that I provide the Committee with additional information regarding the City of West Torrens' failed application to obtain Public Benevolent Institution (PBI) status with the Australian Taxation Office (ATO).

In evidence before the Committee I indicated that, one of the most significant problems facing Council in the recruitment and retention of registered and enrolled nurses to its aged care facility, was the ATO's refusal to grant St Martins the very same taxation status afforded other not for profit and charitable providers of approved residential aged care services.

Aged care sector pay rates (in South Australia) for Registered Nurses (RNs) and Enrolled Nurses (RNs) are (on average) 10% to 15% less than those that apply within the acute hospital sector.

The primary reason is the higher level of funding made available by the Commonwealth and State governments to the public hospital sector, or by private health insurers and patient fees in the private sector, while funding for the aged care sector is essentially confined to the daily bed subsidies that are funded by the Commonwealth and limited client contributions.

Immediately the aged care sector is dealing with a pay differential that it cannot match. Aged care providers are simply not in a position to increase pay rates by 10 – 15% when their base funding (daily bed fees) is only increasing by c.p.i.

The effect of this differential is to disadvantage the aged care sector when seeking to recruit RNs and ENs in competition with the acute sector.

The City of West Torrens is then *further disadvantaged* when competing with the aged care sector because it cannot offer the tax free salary benefits that the majority of providers do offer, courtesy of their PBI status.

Residential Aged Care operators with PBI status can provide their RNs and ENs with some \$17,000 of salary that is (effectively) tax free, something that all public hospitals can provide on top of their 10 – 15% better pay rates!

The vast majority of residential aged care providers in South Australia are either “Not For Profit” agencies (with PBI status) or “Charitable Organisations” (most notably the Catholic, Uniting and Anglican Churches) which automatically have PBI status for taxation purposes.

It is clear therefore that the agencies best placed to recruit and retain RNs and ENs in South Australia are, in order,

1. Public Hospitals, with 10-15% better pay rates *and* PBI status;
2. Private Hospitals, better pay rates but no PBI status;
3. Aged Care Providers with PBI status
4. Private Aged Care Providers, with pay rates higher than the industry average, but funded by (private) client fees;
5. Aged Care Providers without private clients and no PBI status.

The City of West Torrens falls into the last category, a very small group!

For the Committee's information I have included a copy of Council's appeal against the ATO's original refusal to grant Deductible Gift Recipient Status (and therefore PBI) to St Martins Aged Care Facility and the ATO's follow up determination which upheld its original assessment.

Notwithstanding the very long and considered 'refusal advice' from the ATO, which canvasses a number of matters and is replete with ATO and Court rulings to substantiate their opinion, it remains my view that the decision to refuse Council's application relies entirely on the ATO's view that the City of West Torrens is “.....*merely performing the accepted functions of government such as the provision of health services*”.

If members of the Standing Committee had not already known prior to taking submissions and evidence, they would certainly know by now that the provision of residential aged care services by the City of West Torrens (or any other local government authority across Australia) is not *merely performing (an) accepted function of government*.

Only 4 local authorities in South Australia provide such services, 64 do not, and only one has obtained and retained (after an expensive appeal) PBI status.

While I understand that many local authorities in other states do operate Commonwealth accredited and funded residential aged care services (i.e. nursing homes and hostels), I do not believe that Local Government (as an entity across Australia) is regarded generically by either Commonwealth or State governments (or the public) as an *operator* of nursing homes and/or hostels.

This is not to suggest that that Local Government ought not become involved where it can, but to demonstrate that Councils which do operate residential facilities are not merely performing an *accepted function*, it is disingenuous (if not mischievous) to state otherwise and results (directly) in residents of our facilities being denied equitable access to professional nursing services (both in terms quantity and quality).

Despite Council's concerns about the financial and human resource implications involved in redeveloping St Martins, it decided to proceed and we expect our 115 bed facility to be fully operationally by the end of 2006 without the benefit of any Commonwealth capital grant funds.

The facility will have to generate an operating profit in excess of \$700,000 p.a. to service the loan that is required to part finance the redevelopment, resident bonds will cover the remainder, and St Martins is confident of meeting its obligations without Council (i.e. ratepayer) subsidies, however, if it needs to substantially increase RN and EN pay rates to compete for staff, the financial viability of the service may be threatened.

The City of West Torrens did (and does) not seek PBI status to create a tax advantage for all of its employees, it was merely trying to establish a level playing field for the recruitment and retention of nursing home and hostel staff.

Any assistance that the Committee may be able to bring to bear in 'adjusting' the ATO's reliance on its *merely performing the accepted functions of government* mantra, to refuse PBI status to deserving agencies, would be most welcomed.

The removal of such a restrictive interpretation may well pave the way for more local councils to consider the direct provision of Commonwealth approved residential care services; it would certainly assist the City of West Torrens in its own endeavours.

Should you require further information, please do not hesitate to contact me on [REDACTED] or email [REDACTED]

Yours sincerely



Declan Moore
Group Manager City Services