

## Question on Notice

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**Answer to question taken on notice by the Health Workers Union, from the Deputy Chair, at a public hearing in Ballarat, Victoria, Tuesday 14th March 2017**

### **QUESTION (pp. 41 & 42 Proof Committee Hansard Transcript)**

**DEPUTY CHAIR:** How often do you ring the Fair Work Ombudsman and put these very serious cases to them for them to investigate? Could you take that on notice? I would be really interested, because these are serious allegations. We have a process and I would be really keen to know that the union was backing their members and ensuring that went to the Fair Work Ombudsman.

### **ANSWER (provided 4th April 2017)**

“Attention - Committee Secretary”

Senate Education and Employment Committee

PO Box 6100 Parliament House CANBERRA ACT 2600

Dear Senator Marshall,

### **Question on Notice – Answered in two parts 1) How often the HWU contacts the Fair Work Ombudsman & 2) What does the Health Workers Union do to back their members**

We refer to your Question on Notice in relation to the evidence given by Mr David Eden at the Senate hearing in Ballarat on the 14th March 2017.

To begin with, after reading through the Hansard Proof Transcript it becomes apparent that Mr Eden misunderstood the question that the Deputy Chair, Senator McKenzie was asking. Mr Eden was under the impression that the Deputy Chair was asking him about what the HWU was doing for the members in relation to the specific example that he gave about the SRS employer ‘Bowen-Lee lodge’ in Ballarat on page 40 of the Transcript. After reading the Hansard Transcript it became evident that Senator McKenzie was asking what the HWU did to represent its members in general and how often the HWU contacted the Fair Work Ombudsman and asked the Ombudsman to

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investigate the case examples used at the senate hearing and other very serious cases that our members make us aware of.

### **How often the HWU contacts the Fair Work Ombudsman**

Specifically, we refer to your question: How often do you ring the Fair Work Ombudsman and put these very serious cases to them for them to investigate?

By way of response, in recent memory, we can recall only three matters that were referred to the Fair Work Ombudsman, via their workplace complaints mechanism. We believe these were referred in late 2014 to early 2015. These three matters related to underpayments, two of which are significant (relating to underpayments totalling over \$100,000).

As part of the FWO process, these matters proceeded to a telephone mediation, which only resolves matters by agreement. The respective mediations did not resolve the matters and the Fair Work Ombudsman did not take the matters any further.

In one of these matters we have now instructed lawyers to act in the matter and they will shortly be commencing proceedings in the Federal Circuit Court.

In another of these matters, we are seeking legal advice in relation to the claim – predominately relating to the procurement of evidence to support the claim, to strengthen chances of the matter being successful in court.

Anecdotally, recently in two further matters where we are now acting for members, they had independently referred matters to the FWO, before raising them with the union. One matter related to the underpayment of wages, due to an alleged incorrect classification under the relevant Modern Award, and the other related to the failure to recognise transferring entitlements in a transfer of business (which impacts at least three of our members). In both these cases, the FWO was unable to resolve the matters and we are now acting. In the underpayment matter, we have obtained instructions to initiate a dispute under the Award disputes settlement process. However, due to jurisdictional limitations of the Fair Work Commission, if we cannot resolve the matter by conciliation, we will need to take the matter to the Federal Circuit Court to enforce the back-payment. In relation to the other matter, the FWO was not able to resolve the matter, and in the first instance, we have instructions to commence a dispute under the dispute settlement procedure of the award.

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Generally, we find the Fair Work Ombudsman to be ineffective, and do not refer matters to it!

### **What does the Health Workers Union do to back their members**

Specifically, we refer to your question: What does the Health Workers Union do to back their members?

By way of response, the HWU backs their members using multiple avenues available to them. Please see below:

#### **Fair Work Commission**

In most cases we characterise a breach of the Act (or an instrument created thereunder) as a dispute under the dispute settlement procedure of the enterprise agreement or award (which include the NES). Over the past two years we estimate that the union has filed some 40-odd matters in the Commission in this context. This does not reflect the many, many more matters that our Organisers resolve through the disputes settlement process without the need to resort to the Fair Work Commission.

These matters are almost always resolved by conciliation. Our records indicate that only one dispute matter we have filed in the Commission in the past two years has proceeded to arbitration (the decision is still pending).

#### **Federal Courts**

In the past two years the Union has only had two matters in the Federal Court jurisdiction, both of which were settled out of court and formalised in a deed of settlement. Both matters were collective in nature, and affected many members.

However, currently we have one matter where we are instructing lawyers to commence proceedings relating to an underpayment matter.

#### **Small Claims division**

In the past two years, only one matter has progressed to the small claims division of the Federal Circuit Court. This matter was settled outside of court.

However, we have some four matters currently on foot that may be filed in the small claims division of the Federal Circuit Court (if unresolved).

#### **Voluntary compliance**

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In most cases in relation to underpayments, we resolve matters directly with employers without the need to file matters in the relevant jurisdictions. This is particularly so when we have substantiated the claim with evidence and put the employer on notice via a letter of demand that we will pursue the matter in court should it not be resolved.

As an example, in the past six months or so, one of our staff alone has recovered over \$66,000 in underpayments (across 27 members) in differing underpayment matters. We do not have figures across all our organisers or staff in relation to the recovery of money, but this proves illustrate the point.

Further, for illustrative purposes, we work with some employers directly in relation to systematic and widespread underpayments. One case in the not-for-profit sector has seen millions of dollars of underpayments rectified by the employer (voluntarily).

Due to the prohibitively costly mechanism of taking matters to court, coupled with the limitation of jurisdiction of the Fair Work Commission, seeking voluntary compliance is the most common approach to resolving underpayment matters. More often than not, such matters are resolved by deed of release, with conditions of no further actions and confidentiality.

We trust this answers your Question on Notice.

Yours Sincerely

David Eden

Assistant Secretary

Health Workers Union

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**Answer to question taken on notice by the Health Workers Union,  
from the Chair, at a public hearing in Ballarat, Victoria, Tuesday  
14th March 2017**

### **QUESTION (pp. 38, 39 & 40 Proof Committee Hansard)**

**CHAIR:** I think we would be interested in having your thoughts on notice about what could be done to close those loopholes

### **ANSWER (provided 4th April 2017)**

“Attention - Committee Secretary”

Senate Education and Employment Committee

PO Box 6100 Parliament House CANBERRA ACT 2600

Dear Senator Marshall,

**Question on Notice** – To elaborate or set the scene, Mr Eden raised the matter of Transmission of Business becoming a real problem for us (HWU) as employers discover, if you like, loopholes in the system. In one instance, many of our members missed out on long service leave (employer would make them redundant or fire them close to their 10 years of service).

The HWU gave another example during the senate hearing in relation to workers not being offered redundancy but instead offered alternative employment that was not suitable to employees because the job was not the same or that it was located a long distance from their original place of employment prior to being made redundant.

Finally, the HWU also gave an example of labour hire contractors being used by certain companies to avoid transfer of business. For example, an aged care provider may make a certain number of employees redundant. Another company that may be linked to the aged care company that made its workers redundant may hold off hiring these employees for at least 3 months and use workers from a labour hire company. After the 3 month period is over, the “linked” company will then advertise aged care positions similar to the ones that were made redundant- with the view of hiring the same aged care

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workers that were made redundant. All this is done to avoid transfer of business and Enterprise Agreements.

We refer to your Question on Notice in relation to the evidence given by Mr David Eden and Mr Kamal Bekhazi at the Senate hearing in Ballarat on the 14th March 2017.

- 1) Specifically, there needs to be a review of the Fair Work Act 2009 and changes must be made to the wording relating to Transfer of Business. For example, we must tighten up the definition or clause in the Fair Work Act 2009 that refers to “making a reasonable Job offer” or redeployment! These changes will need to occur to close the loop holes manipulated by various companies/employers.
- 2) A state or national Portable Long Service Leave Scheme would prevent employers from avoiding their Long Service Leave obligations to their employees.
- 3) The implementation of a Labour Hire Scheme would prevent certain employers from attempting to avoid transfer of business by utilising labour hire companies.

We trust this answers your Question on Notice.

Yours Sincerely

Kamal Bekhazi

Research and Projects Officer

Health Workers Union

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**Answer to question taken on notice by the Health Workers Union, from the Chair, at a public hearing in Ballarat, Victoria, Tuesday 14th March 2017**

### **QUESTION (pp 42 & 43 Proof Committee Hansard)**

**CHAIR:** Yes, we would be interested, on notice, if you were able to actually drill down on some of those stats. These are the issues we would like to then challenge others about and test. Even if they are anecdotal—

We refer to your Question on Notice in relation to the evidence given by Mr David Eden and Mr Kamal Bekhazi at the Senate hearing in Ballarat on the 14th March 2017.

To elaborate or set the scene, Mr Eden and Mr Bekhazi raised the matter of Opel Aged Care and the Geoffrey Cutter Centre (Aged care part of Ballarat Health) using 187 regional employer sponsored visa and other VISA multiple subclasses to employee people from the Subcontinent.

The following extract is from the Proof Committee Hansard-to set the scene and attempt to make our response clear.

**Mr Bekhazi:** Our members are telling us that they are not getting enough hours, and they ask for hours. When a position comes up or when there are hours available, the company tells them. They advertise internally, and they tell them to apply. They apply. And they tell them, 'You weren't successful in the interview.' Then they apply externally, and then a number of members in the community apply, and they tell them that they were not successful. Then they use the 187 regional employer sponsored visa. What we are seeing—and we have about 50 members who have told us this—is people coming in from the subcontinent, particularly from Sri Lanka and India, coming into these facilities and basically and taking the hours that they would have loved to have.

### **ANSWER (provided 4th April 2017)**

“Attention - Committee Secretary”

Senate Education and Employment Committee

PO Box 6100 Parliament House CANBERRA ACT 2600

Dear Senator Marshall,

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By way of response, I attempted to contact the **Geoffrey Cutter Centre** initially by telephone requesting to speak to the Human Resources Manager. I was told that I needed to contact Ballarat health directly because they manage the Geoffrey Cutter centre.

I proceeded to contact Ballarat health switch board and was put through to the Human Resources manager Personal Assistant and was told that the HR manager was very busy and did not take phone calls and that any request needed to be made via email.

I was given the following email address:

I then proceeded to write the following email:

“I am requesting information about the Geoffrey Cutter Centre (Aged care).

Specifically, can you tell me how many staff that you have currently employed at the Geoffrey Cutter centre that are on a VISA (multiple Subclasses 457, 186, 187, 189, 489 or other).

I hope that you can help me with my research.

This request is directly linked to evidence that was given to the Senate Inquiry into corporation avoidance of the Fair Work Act held in Ballarat in early March of this year.

I am not inferring that your organisation has breached the Fair Work Act, but rather following up on Questions on Notice from the senate inquiry that I attended.

I hope that you can provide me with this information ASAP, because the senate has requested that I provide them with this information by the stipulated date (4/4/2017).

If you cannot provide me with this information, then I will have to report this to the senate and request that the Senate Committee formally follow up and get this information directly from you”.

To date, I have not received a response from the Geoffrey Cutter centre or Ballarat Health.

Therefore, I am forced to rely on information given to the HWU by the members that work at the Geoffrey Cutter centre. Geoffrey Cutter Centre is a 60 bed residential aged care home located in Ballarat East. Our members inform us that there are about 20 workers at the Geoffrey Cutter centre that



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may be employed under the 187 regional employer sponsored visa or multiple subclasses 457, 186, 187, 189, 489 or other.

I request the Senate Committee use their powers and resources to obtain the information that the Senate Chair has requested. I urge the Senate Committee to gather information about the Geoffrey Cutter Centres hiring practices of overseas workers and to obtain similar information in relation to the other aged care facilities run by Ballarat health located across five suburbs in Ballarat (see below).

In addition to this, I request that the Senate Committee audit all of Ballarat Health's aged care facilities compliance with the rules and regulations associated with the hiring of overseas workers.

### Ballarat Health Services other aged care facilities:

- Talbot Place, Ballarat
- Bill Crawford Lodge, Ballarat
- Eureka Village, Ballarat East
- Hailey House, Ballarat North
- Jack Lonsdale Lodge, Sebastopol
- James Thomas Court, Sebastopol
- W.B. Messer Hostel, Wendouree
- P.S. Hobson Nursing Home, Wendouree

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By way of response, I attempted to contact **Opel Aged Care** initially by telephone requesting to speak to the Human Resources Manager. I was told that I needed to contact Opel aged care using the following email address: [communications@opalagedcare.com.au](mailto:communications@opalagedcare.com.au) because management do not answer questions over the phone and are too busy to talk to me.

I proceeded to contact Opel aged care via the above email address and attempted to contact their HR manager using the following email address and their General Manager using the following email address and finally attempted to make contact with Opel aged care using the Enquiry form on their website via the following webpage (<https://www.opalagedcare.com.au/contact-us/>).

The only response I received from Opel Aged care was the following: The following organization rejected your message: [domainprincipal.com.au](https://www.domainprincipal.com.au).

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I attempted to send another email using the following email address [communications@opalagedcare.com.au](mailto:communications@opalagedcare.com.au) adding that “I imagine that this must have been an error, because an organisation such as Opal Aged care wouldn't reject an attempt to communicate about matters raised by a Federal Senate Inquiry!

Unfortunately, I have not heard from Opel Aged care!

The following email was sent to all the aforementioned email addresses:

“I am requesting information about the Opel Aged Care facilities within Victoria (Aged care). Specifically, can you tell me how many staff that you currently have employed that are on a VISA (multiple subclasses 457, 186, 187, 189, 489 or other).

In particular, can you prioritise information regarding the following facilities in Victoria?

### **Melbourne & surrounds**

- Opal By the Bay
- Opal Gillin Park
- Opal Gracedale
- Opal Hobsons Bay
- Opal Meadowglen
- Opal Roxburgh
- Opal Salford Park
- Opal South Valley
- Opal Warrnambool

### **Gippsland**

- Opal Bairnsdale
- Opal Lakeview
- Opal Paynesville
- Opal Seahaven
- Opal Sale

I hope that you can help me with my research.

This request is directly linked to evidence that was given to the Federal Senate Inquiry into corporation avoidance of the Fair Work Act held in Ballarat in early March of this year.

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I am not inferring that your organisation has breached the Fair Work Act, but rather following up on Questions on Notice from the senate inquiry that I attended.

I hope that you can provide me with this information ASAP, because the senate has requested that I provide them with this information by a stipulated date (4/4/2017).

If you cannot provide me with this information, then I will have to report this to the senate and request that the Senate Committee formally follow up and get this information directly from you.

Kind Regards

Kamal”

Due to the fact that Opel aged care did not reply to my requests for information, I am forced to rely on information given to the HWU by the members that work at the below facilities. We estimate that there are 16 workers in each of the below mentioned worksites that may be employed under the 187 regional employers sponsored visa or other multiple subclasses: 457, 186, 187, 189, 489 or other.

### **Gippsland Opel Aged care facilities**

- Opal Bairnsdale
- Opal Lakeview
- Opal Paynesville
- Opal Seahaven
- Opal Sale

I request the Senate Committee use their powers and resources to obtain this information from Opel aged care or by other means. I urge the Senate Committee to audit all of Opel Aged care facilities compliance with the rules and regulations associated with the hiring of overseas workers.

We trust this answers your Question on Notice.

Yours Sincerely

Kamal Bekhazi

Research and Projects Officer

Health Workers Union