

7 April 2017

Standing Committee Education and Employment References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: eec.sen@aph.gov.au

Dear Committee

Re: Evidence to the Committee, 14 March 2017

VHIA is a registered organisation of employers representing public health services and stand-alone community health services in Victoria.

On 14 March 2017 as part of its inquiry into corporate avoidance of the *Fair Work Act 2009*, the Committee heard from representatives of the Health Workers' Union (**HWU**), formerly the Health Services Union, Vic No. 1 Branch.

Several of VHIA's members were referred to by HWU. In our view, HWU made statements to the Committee that do not accurately represent our members.

We acknowledge that HWU has members outside Victorian public health services and stand-alone community health centres and that some comments of concern to us may refer to employers other than our members. However, we anticipate that a significant proportion of HWU's membership is employed by our members and we are concerned to ensure that the Committee is not left with an impression of non-compliance where, in our view, this is not the case.

The HWU made comments about a broad range of matters. We were particularly concerned regarding their statements with respect to:

- Under payment of wages, and
- Workplace bullying.

We shall address each in turn.

Underpayment of wages

The HWU asserted, in part, that it has recouped 'around \$6 million' of entitlements for its members. It then made reference to the cost of legal proceedings to recoup underpayments. The HWU stated, in part:

So businesses are basically calling our bluff and calling their employees' bluff because they figure they can get away with it. In fact, the bigger the amount of money owed the more blatant it is because if it is less than \$20,000 at least you have got the small claims tribunal to try and recoup that money in, which is a no-fee system. When it is more than \$20,000 that is when our members or non-members, just employees, have to really fork out some big dollars to get back their entitlements.

(Proof Committee Hansard, 14 March 2017, page 36)

The HWU also stated:

I imagine you would have a lot of people that are fearful of raising underpayment issues with their employer, especially if they really need at job, and especially if they have seen their employer sack their previous colleagues when such issues are raised. People have mortgages, they have families, they have bills to pay, and depending where you are at, and what area you are in, it is pretty hard to get a job. Hearing from our members from here all the way up to west Wimmera and all the way down to Warrnambool, it is really hard to get a job.

(Proof Committee Hansard, 14 March 2017, page 36)

These statements do not reflect our experience of employers in public health services and stand-alone community health sector.

Victorian public health services and stand-alone community health services have enterprise agreements. As the Committee will be aware, each enterprise agreement contains dispute settlement provisions.

The enterprise agreements are complex. Where underpayments occasionally arise, the most common source is the misapplication of an enterprise agreement.

Where underpayments are identified, they are mostly resolved directly with the affected employees or their representative, including the HWU. Sometimes a party will seek the assistance of the Fair Work Commission (**FWC**) through conciliation and, occasionally, arbitration.

FWC remains an extremely effective, low-cost jurisdiction for the resolution of disputes including disputes regarding alleged underpayments. Whilst it is important to acknowledge that these dispute resolution procedures are not available if the employment has ended, we are mindful that the evidence provided by HWU did not make this distinction.

Employers in our sector want to ensure their employees are paid correctly. From our own experience, those who raise underpayment queries are not treated less favourably.

We acknowledge that HWU's evidence in this respect was speculative rather than specific; however, to the extent that it may have created an impression in the mind of the Committee that employees in our sector are afraid to raise underpayment concerns, it is appropriate to dispel that impression.

Workplace bullying

We acknowledge that workplace bullying can occur in any workplace. Further, that any one is capable of engaging in bullying behaviour; specifically, any one is capable of engaging in repeated unreasonable conduct directed at an employee or a group of employees that has an effect on occupational health and safety.

Workplace bullying is a serious matter. Both we and various unions (including HWU) have committed to actions under our enterprise agreements to eliminate bullying.

Hepburn Health Service

The HWU's comments regarding workplace bullying were preceded by the following question from the Committee Chair:

Some of the evidence we heard earlier was that even in a place as large as Ballarat, the employers know each other and the actual threat, 'I will sort you out, so you won't get work anywhere' is a real threat. In your area, the health industry, employers would know each other. Is that happening in Ballarat? If that is happening in Ballarat, and everywhere else is smaller as we go out further, it must be more and more difficult.

(Proof Committee Hansard, 14 March 2017, page 36)

In response, HWU referred to our member, Hepburn Health Service. Specifically, HWU stated in part:

For example, there are at least five individuals who were victims of bullying and harassment at Ballarat Health Services that fled to Hepburn Health Service ...because it was a safe haven. Hepburn Health Service was a really good employer. Where do some of the bullies go? They are now in management positions. One of them is now the deputy CEO of Hepburn Health. How fearful do you think those individuals were who named these people in this report? As a result, now they are resigning from Hepburn Health and going somewhere else, or are totally disillusioned and leaving the industry altogether.

(Proof Committee Hansard, 14 March 2017, page 36)

We believe those statements are both unfair and inaccurate.

It is correct that there were significant investigations of alleged bullying at Ballarat Health Services. These investigations concluded that there were significant workplace culture issues. It is also correct to say that there were significant changes within the Executive at Ballarat Health Services.

Our concern is that HWU has, in effect, equated managers who were associated with Ballarat Health Services with being bullies.

That assertion is, in our view, wrong and inappropriate.

We understand that the Deputy CEO of Hepburn Health Service was not identified by any investigation to be a 'bully' as claimed by HWU. We are advised by our member, Hepburn Health Service, that it is not aware of any resignation following the appointment of the Deputy CEO.

We are deeply concerned that the effect of HWU's statement is that those previously associated with Ballarat Health Services should not be employed elsewhere.

Such an approach would be fundamentally at odds with principles relevant to workplace bullying matters.

There is some irony that in response to a question from the Committee Chair about people being (in effect) barred from employment, HWU have criticised Hepburn Health Service for a decision to employ someone.

Ballarat Health Services

HWU made the following statement:

Ballarat Health Services here in Ballarat, the Geoffrey Cutter Centre, is another workplace that is rife with bullying and harassment. The manager there, Jacqui King, has indicated to the staff that no-one here is going to work full-time and get an ADO. Meanwhile, there appear to be more and more visa holders working within their organisation.

(Proof Committee Hansard, 14 March 2017, page 43)

We have discussed these comments with our member, Ballarat Health Services and we can advise the Committee whilst there were complaints of bullying regarding Geoffrey Cutter Centre (**GCC**), they were investigated and found to be unsubstantiated. The investigation did recommend action to improve management-employee-union relationships at GCC. Ballarat Health Services management, affected GCC employees and their representatives (including the Health Workers Union) are being assisted by former Fair Work Commission member, Wayne Blair, in this regard.

The assertion that the Director of Nursing (**DON**) of GCC has indicated that no one is going to work full time is rejected. The proportion of part time employment in health services is high but, broadly speaking, this is not driven by Employer preference but the preference of employees in balancing their work and family responsibilities.

To the extent that the HWU's evidence may have inferred that the DON of GCC has engaged in bullying activity, this is rejected. Whilst complaints were made, they were investigated by WorkSafe and an independent investigator, and found to be unsubstantiated.

There is not an increasing number of visa holders at Ballarat Health Services generally or GCC in particular.

HWU has made statements regarding a number of other public health services. That we have not addressed all of them specifically should not be interpreted as a concession as to their accuracy.

We respect the work of the Committee and its inquiry. However, it is our view that some statements made by the HWU cannot be left unchallenged.

In the event of any queries arising from this correspondence, please do not hesitate to contact VHIA's Chief Executive Officer, Stuart McCullough .

Yours sincerely

Stuart McCullough
Chief Executive Officer

VICTORIAN HOSPITALS' INDUSTRIAL ASSOCIATION