



## Queensland Nurses' Union

# Supplementary Response to the Productivity Commission

## Draft Report Caring for Older Australians

**May, 2011**

## **Introduction**

The QNU seeks leave of the Productivity Commission (the Commission) to make a supplementary response to the draft report *Caring for Older Australians* (the report). We have provided input to the Australian Nursing Federation's response to the report (submission number 772) and would now like to provide the Commission with details of specific case studies in Queensland that highlight many of the points we have previously made regarding accountability in public funding for aged care. We have not introduced this material until this time because we were hopeful that enterprise bargaining negotiations might be able to produce an acceptable outcome for our aged care nurses. Unfortunately recent events indicate that this will not eventuate. Therefore we provide the following case studies as examples of why the focus on funding needs to be not only on the mechanism but also on transparency and greater accountability of providers in the way that funding is used.

## **Overview and context**

The case study material provided in this supplementary response is relevant to the Productivity Commission's terms of reference for conducting its inquiry into *Caring for Older Australians* (Productivity Commission, 2010), specifically to :-

Develop regulatory and funding options for residential and community aged care (including services currently delivered under the Home and Community Care program for older people) that:

- are financially sustainable for Government and individuals with appropriate levels of private contributions, with transparent financing for services, that reflect the cost of care and provide sufficient revenue to meet quality standards, provide an appropriately skilled and adequately remunerated workforce, and earn a return that will attract the investment, including capital investment, needed to meet future demand. This should take into consideration the separate costs associated with residential services, which include but are not limited to the costs of accommodation and direct care, and services delivered in community settings;
- consider the regulatory framework, including options to allow service providers greater flexibility to respond to increasing diversity among older people in terms of their care needs, preferences and financial circumstances, whilst ensuring that care is of an appropriate quality and taking into account the information and market asymmetries that may exist between aged care providers and their frail older clients;

- minimise the complexity of the aged care system for clients, their families and providers and provide appropriate financial protections and quality assurance for consumers.

The case studies are also relevant to recommendation 11.2 of the Productivity Commission's draft report (2010):

The proposed Australian Aged Care Regulation Commission (draft recommendation 12.1), when assessing and recommending scheduled care prices, should take into account the need to pay competitive wages to nursing and other care staff delivering aged care services.

We hope that in the final report the Commission will recommend a specific mechanism for ensuring aged care providers allocate funding, whether it is government subsidy or resident fees and charges, specifically towards overcoming the problem of uncompetitive wages. We draw attention to the Commission's draft report (2010, p.6) which states:

The wage disparity between nurses in different settings will not be resolved through the FWA cases, and is likely to widen in the future unless there is a concerted effort by stakeholders to move to a more competitive wage level. However, previous attempts by the Australian Government to encourage aged care providers to 'pay competitive wages' have not narrowed the wages gap for nurses. One of the reasons cited for this was that there was no specific requirement for providers to direct the extra funding towards higher wages (PC 2010).

In the long term, it is unlikely that wage for aged care workers will become or remain competitive unless there is an independent mechanism for assessing the cost of delivering care and setting scheduled care prices accordingly.

The bargaining case studies we present here underscore the QNU's contention that factoring wage costs into a 'care' price will not guarantee that employers will actually spend the funds on wages unless the funds are specifically earmarked for this purpose. It is the QNU's ongoing experience that some aged care employers will not put such monies to that use unless they are forced to prove they have done so.

Despite wide recognition by aged care employers and their industry bodies that there is a need to improve the wages of nurses in aged care, some employers during wage bargaining are showing little preparedness to address this problem. We believe that employers have the opportunity through enterprise bargaining to improve wages, yet choose to improve their profit margin instead. The diversity of wage rates evident in Attachment 1 indicates the sporadic increases that occur through bargaining.

The QNU strongly believes that the efficient use of extra funds made available for aged care, whether they be public or private contributions, requires the adoption of a transparent mechanism for scrutinising how employers spend these funds. We explore this further in the final section of this supplementary response and in QNU and ANF material previously provided to the Commission.

## Case Studies

### Enterprise Bargaining in Tricare

Negotiations for an enterprise agreement to replace the *Tricare Workplace Agreement 4 2006-2009* commenced in April, 2009. The new agreement was to have been for three years with wage increases of two per cent on commencement of the agreement and increases equivalent to the Commonwealth Other Purpose Outlay (COPO) adjustments (with a minimum of 1.5%) in July 2010 and 2011. A majority of staff did not approve the agreement when it was put to ballot in November, 2009.

Compared with other aged care employers in Queensland, Tricare offers very poor pay and conditions. This is exacerbated by the fact that employees at other facilities have access to salary sacrificing which can significantly increase their take home pay. As a 'for profit' organization, Tricare's employees do not have access to this entitlement.

Negotiations recommenced for a replacement agreement in March, 2010. At that meeting, Tricare made a new offer to replace the one that the workers had voted down. It offered a three per cent increase from 1 July, 2010 and increases equivalent to the COPO indexation from 1 July, 2012 with no guaranteed minimum. Tricare withdrew all other improvements in the previous offer including an enhanced career structure for enrolled nurses and an entitlement to pro rata long service leave after seven years.

Again staff rejected this offer and advised Tricare of the outcome in April, 2010. The minutes of this meeting record that there had been some discussion at a previous meeting that '**Tricare may have a problem affording increase to wages, however correspondence indicated this is not the case, but (they) don't want to pay**' See extract of minutes at Attachment 2 .

On the advice of members, the QNU sought a 4% per annum wage increase, the reinsertion of improvements previously offered, and the inclusion of the minimum conditions from the *Aged Care Award 2010* and the *Nurses Award 2010*.

In June, 2010, Tricare made another offer that was an improvement on its original wages offer for steps 1, 2, and 3 for Personal Care Attendants, Environmental Services Attendants and Food Services Attendants for the first year of the agreement but the offer for higher level classifications remained the same.

The increases at the lower levels were actually lower than those in the relevant Awards (for nurses this is the *Nurses Award 2010*). Union officials expressed concern that the offer may not even meet the Better Off Overall Test (BOOT). The Better off Overall Test (BOOT) is the test that Fair Work Australia (FWA) must apply to a proposed enterprise agreement before it can be approved. The BOOT will compare the terms of a proposed enterprise agreement against the relevant modern award to make sure employees will be better off overall.

Tricare maintained that it was not a matter for the unions whether the agreement met the BOOT.

Tricare insisted the second offer be put to ballot despite the negative feedback from employee representatives.

At this time, the QNU made an application to FWA for assistance with bargaining. Commissioner Simpson offered to chair a meeting with the parties to try and overcome the impasse. Tricare responded that it would not take part in such a meeting.

The QNU then made an application for a good faith bargaining order against Tricare on the grounds that Tricare breached four requirements of good faith bargaining requirements under the *Fair Work Act 2009*. FWA did not grant the bargaining orders that the QNU had sought.

Very soon thereafter, Tricare put the draft agreement out to ballot a second time in September, 2010. Again, the staff members rejected the offer with an emphatic 'no' vote of over 70%.

In its most recent advice to staff (3 May, 2011), Tricare advised that the offer it made on 27 January, 2011 (4%, 3%, 3% - which it withdrew on 16 March following feedback from the majority of staff representatives that it would not be acceptable) would not be re-offered to staff.

Instead, Tricare indicated that it would make a revised offer after taking account of the Fair Work Australia Annual Wage Review (AWR) decision likely to be handed down in June, 2011.

Tricare will use the AWR figure to formulate a new offer and modeling to meet the requirements of the BOOT. Tricare has indicated that any future offer may have different pay increases for the different step levels as some step levels may receive automatic pay increases from 1 July under the AWR.

The QNU is now considering further action in light of Tricare's disappointing approach to bargaining and unwillingness to respond to the clear message from its staff that they expect wages comparable to industry standards.

We contrast TriCare with BlueCare/Wesley Mission Brisbane where the significant improvement to wages and conditions made during the last round of enterprise bargaining in 2008 are now under threat of erosion as the parties enter a new round of negotiation in 2011.

### **Enterprise Bargaining in BlueCare/Wesley Mission Brisbane (BC/WMB)**

In late May, 2008 the QNU and BC/WMB entered into an enterprise bargaining agreement (EB6) that they negotiated through a mutual gains process of interest based bargaining. The agreement delivered an 18% wage increase over three years, enhanced career progression, improved long service leave, increased allowances and other entitlements.

This agreement achieved public sector parity for enrolled nurses until December, 2008 and reduced some of the wages gap between the aged care and public sector for registered nurses and assistants in nursing.

EB7 negotiations commenced in March, 2011 and it is already clear that the parties are a long way apart in significant issues such as wages and leave entitlements. BC/WMB has offered a 2% per annum wage increase over three years and the withdrawal of existing entitlements for payment of sick leave accrual on termination, as well as other beneficial provisions.

Members have indicated that they are completely unsatisfied with the offer and will not support it.

BC/WMB's position is disappointing for the QNU and its members and is particularly concerning because it represents a backward slide in the very slow progress towards wages parity for aged care nurses. Where BC/WMB had taken the lead in improving employment standards for aged care nurses we are now seeing a return to the historically low bargaining offers that characterise the aged care industry.

## **Transparency and Accountability in Aged Care Funding**

In order to understand why Tricare is adopting such a hard line approach to paying fair wage increases, the QNU sought the assistance of BDO Kendalls in examining its publicly available Annual Report.

The following is a brief summary of the financial reports for TriCare Limited:

- the financial reports are for TriCare Limited as a single entity;
- the subsidiaries have not been consolidated with the parent company's financial results and position;

- the company made an operating profit of \$593,434 for the 2010 year ( \$208,938 for 2009);
- a very high income tax expense has been recorded against the 2010 operating profit but if you refer to note 4 on page 20, you will note that \$1,219,268 was due to an under provision for tax in prior years. Note 12 which summarises tax payable shows an amount payable of approximately \$1.2million which must include the under provision;
- there are no details available to show how or why the under provision occurred. It may be voluntary amendment for prior years or as a result of an Australian Taxation Office audit;
- Note 20 includes reference to "Key Management Personnel Compensation" - it notes that "Key Management Personnel are also remunerated by private companies which are outside the TriCare Group;
- TriCare Limited - is owned by TriCare Group Pty Ltd - this does not appear to be an Australian registered company.

From these figures it is difficult to gain a clear picture of TriCare's financial situation in respect to payment of staff. We note that there is also restricted information on remuneration of key management personnel. In all, the complex array of operations allows limited scrutiny bearing in mind TriCare's documented acknowledgement that it is not incapable of paying acceptable wage increases but rather unwilling to do so. This opaque picture of accounting for public funding is not in the public interest nor our members'. The public should have confidence in the allocation and spending of tax payer's money.

Funding in residential aged care should include a transparent and accountable allocation of the health and aged care component with a separate allocation of funds for accommodation and other services accounted for independently. At present, lack of information makes it difficult to determine how both providers and government account for spending in these areas. Many companies are not publicly listed. In particular, the 'for profit' sector displays extreme reluctance to QNU requests for review of their profit and loss statements. The federal government would greatly improve the regulatory environment by implementing a more detailed and transparent acquittal process where residential aged care providers clearly account for how they spend capital and recurrent funding. The QNU believes that 'transparency' should take into account the following:

- Accreditation of auditors for the aged care industry;
- The authority regulating the aged sector must ensure the highest standard of independence of its auditors. ASIC and other professional bodies regulate auditors, however inspection and reviews focus largely on ASX listed entities. This may preclude small audit firms from the same level of review.

We also ask the Productivity Commission to conduct its own examination of the funding arrangements at TriCare as an inquiry case study to establish the use of public funding and TriCare's clear lack of interest in providing fair pay and conditions for its workforce. These are vulnerable workers who currently live on low wages that not only do not meet the standards other aged care employers provide, but are well below the public and private sector, particularly in nursing.

For some time, the QNU has been concerned that two of the most significant reform agendas of the federal government (the reform of the industrial relations system and health reform) could be working at cross purposes. The support and promotion of enterprise based bargaining and rejection of the concept of industry wide bargaining through the industrial relations framework contributes to the development of significant pay and condition differentials across the health and aged care systems (within states and between states). We must now conclude that unless there is a mechanism that directly allocates funding for wages that is transparent and enforceable, aged care workers will remain at the mercy of the enterprise bargaining system and their wages will continue to lag behind that of their public and private sector colleagues as our case studies demonstrate.

## **Reference**

Productivity Commission (2010) *Caring for Older Australians* Draft Inquiry Report, Canberra.



# **Attachment 1**

	Arcare	Regis	Lend Lease Primelife	McKenzie	Domain	Sunnymeade	Principal Nambour, Caloundra	Proserpine	Tricare	Tricare	Public
Generation of agreement	2nd	2nd	1st	1st	1st	1st	1st	1st	4th	5th (Withdrawn offer)	7th
	01-Oct-10	01-Apr-11	01-Jan-11	01-Apr-11	01-Jul-10	01-Jul-10	01-Sep-10	01-Jul-10	Current		01-Apr-11
<b>Assistant Nurses</b>	\$/hr	\$/hr	\$/hr	\$/hr	\$/hr	\$/hr	\$/hr	\$/hr			\$/hr
AN ENTRY LEVEL	17.65	17.17	16.66		16.37	16.57	16.90	17.10	16.37	17.02	22.97
AN LEVEL 1.1	17.65	17.79	17.24	17.51	16.37	17.14	17.58	17.72	16.37	17.02	23.30
AN LEVEL 1.2	17.65	18.11	17.54	17.85	16.37	17.97	17.58	18.03	16.37	17.02	
<del>AN LEVEL 1.3</del>							17.46				
AN LEVEL 2.1	18.35	18.48	17.89	18.52	17.60	18.32	17.72	18.40	16.64	17.31	24.50
AN LEVEL 2.2	18.53	18.79	18.89	19.04	19.24	18.60	17.83	18.72	16.64	17.31	24.83
AN LEVEL 3		19.42	19.10	19.67	20.05	18.66	18.36	19.34	16.90	17.58	
<b>Enrolled Nurses</b>											
EN LEVEL 1.1	19.33	20.49	19.30	20.68	20.46	19.19	19.91	20.29	18.85	19.60	24.51
EN LEVEL 1.2	19.33	20.81	19.58	21.08	20.46	20.00	20.20	20.60	18.85	19.60	24.89
<del>EN LEVEL 1.3(a)</del>							20.81				
<del>EN LEVEL 1.3(b)</del>							21.11				
<b>Endorsed Enrolled Nurses</b>											
EN LEVEL 2.1	20.69	21.45	22.08	22.64	20.87	20.97	21.11	21.24	20.83	21.66	25.29
EN LEVEL 2.2	20.89	21.77	23.08	23.79	20.87	22.23		21.56	20.83	21.66	25.69
EN LEVEL 2.3				24.89					20.83	21.66	26.11
<b>Enrolled Nurses (Advanced Practice)</b>											
EN LEVEL 3.1					21.28						26.90
EN LEVEL 3.2											28.56
<b>Registered Nurse Level 1</b>											
RN LEVEL 1.1	26.12	22.00	26.00	30.03	22.10	21.68	23.63	22.83	24.05	25.01	28.61
RN LEVEL 1.2	29.79	23.39	27.27	31.26	23.33	22.98	24.59	24.28	24.05	25.01	31.32
RN LEVEL 1.3	30.08	24.94	28.68	32.67	25.78	24.42	26.31	25.89	24.05	25.01	34.04
RN LEVEL 1.4	30.37	26.37	31.45	33.84	27.42	27.38	26.36	27.38	24.05	25.01	36.76
<b>Registered Nurse Level 2</b>											
RN LEVEL 2.1	33.37	27.65	33.32	35.48	29.06	28.83	32.20	28.71	25.47	26.49	39.17
RN LEVEL 2.2	33.69	28.70	33.71	35.48	29.06	29.92	32.20	29.79	25.47	26.49	40.06
<b>Registered Nurse Level 3</b>											
RN LEVEL 3.1	35.76	30.25	35.13	38.10	29.88	28.83	36.90	31.41	28.74	29.89	48.06
RN LEVEL 3.2	36.10	31.42	36.19		29.88	29.92	37.79	32.61	28.74	29.89	49.26
<b>Registered Nurse Level 4</b>											
Grade 1	42.52	34.52	39.44	38.63		32.81	34.62	35.84			
Grade 2	42.94	36.79	41.58			34.92	36.85	38.19			
Grade 3	43.35	39.06	43.71			37.04	39.08	40.54			
<b>Registered Nurse Level 5</b>											
Grade 1		34.52		45.53		32.81	31.84	35.84			
Grade 2		36.47				34.62	33.59	37.85			
Grade 3		39.05				37.04	35.93	40.54			
Grade 4		41.64				39.45	38.28	43.23			
Grade 5							40.83				
Grade 6											

## **Attachment 2**

**EXTRACT FROM:**

**JCT Meeting Minutes – 21 April 2010**

**Astor Lounge – Mt Gravatt Nursing Centre**

Item	Discussion	Actions / Outcomes
2	QNU discussed union campaigns and distribution of postcards nationally, fair wage national campaign, health and aged care reforms. Discussed financial information requested at last meeting, TriCare at last meeting noted a problem affording increase to wages, however correspondence indicated this is not the case, but don't want to pay.	