



## Queensland Nurses' Union

# Submission to the Queensland Parliament Legal Affairs and Community Safety Committee

*Penalties and Sentences and Other Legislation  
Amendment Bill 2012*

17 July, 2012

## **1.0 Introduction**

The Queensland Nurses' Union (QNU) thanks the Legal Affairs and Community Safety Committee (the Committee) for providing this opportunity to comment on the *Penalties and Sentences and Other Legislation Amendment Bill 2012* (the Bill).

Our submission responds to the proposed changes to the *Industrial Relations Act 1999* (the Act) set out under part 6 and the *Industrial Relations Regulation 2011* (the Regulation) under part 7 of the Bill.

## **2.0 About the QNU**

Nurses and midwives<sup>1</sup> are the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNU - the union for nurses and midwives - is the principal health union in Queensland. The QNU covers all categories of workers that make up the nursing workforce in Queensland including registered nurses, registered midwives, enrolled nurses and assistants in nursing who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 50,000 financial 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. The vast majority of nurses in Queensland are members of the QNU.

## **3.0 Introducing Changes to the Act**

We state at the outset our extreme concern and disappointment with both the new provisions to the Act and the manner in which this government introduced them into the Parliament. We acknowledge that this government did not cause the payroll failure. Nor did the QNU. However, the people of Queensland elected the Liberal National Party (LNP) on a platform of change and stability, and to that end, the LNP must accept its responsibility in government for ensuring that Queensland Health pays its workers on time and in full.

For the past two years, the QNU has expended significant resources working co-operatively with Queensland Health to rectify the payroll system failure. Through strong and determined leadership the QNU has coped with the intense distress Queensland Health's incompetence has caused our members while resisting calls for more extreme action. We have withstood these pressures in a spirit of collaboration with Queensland Health because we share common ground in seeking to resolve this crisis. Yet at the first opportunity, and without consultation or notice, the Attorney-General and Minister for Justice, Hon Jarrod Bleijie, introduced a Bill to the Parliament to change an administrative process through legislation.

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<sup>1</sup> Throughout this submission the terms 'nurse' and 'nursing' are taken to include 'midwife' and 'midwifery'.

These actions set a dangerous precedent for Queenslanders. The payroll system failure occurred through administrative incompetence and the introduction of ineffectual technology by the executive arm of government. The mechanisms for addressing this failure lie with the executive and the consultative processes enabled by industrial awards and agreements. They do not and should not lie with the legislature. This government's use of legislation to fix errors of process are indicative of an unfettered exercise of political power. Queensland Health should operate within the apparatus of the executive arm of government to address administrative matters such as those associated with the payroll system.

In this case we clearly see Queensland Health's complete disregard for the use of consultative mechanisms both in its approach to dealing with individual overpayment matters and its determination to pursue overpaid health workers through the weight of legislation. As this Bill applies only to 'health employers' and 'health employees' - commonly known as Queensland Health and its employees - it proposes an inferior set of industrial laws for these workers separate to the existing laws that apply to all other employers and employees cover by the Act. Not only is the legislation unfounded, in essence it discriminates against one section of the workforce, the very workers who have continued to keep the health system running in the face of enormous frustration and despair. However, they are not the only casualty in this exercise. Trust in Queensland Health as a fair and compassionate employer is now diminishing at an even faster rate. Close to 4,000 members have made this clear to the Committee in our email campaign about the government's proposed changes.

We note that the Attorney-General and Minister for Justice has advised the Parliament that 'the Bill will also assist Queensland Health to make improvements to its payroll and rostering processes so that the department and its employees can have confidence in the future payment of wages and salaries' (Queensland Parliament, 2012, p.1132). Queensland Health must restore its ability to pay its employees correctly through open, constructive dialogue with workers and their representatives, not through the heavy-handed use of legislation. At every turn, the QNU has demonstrated good faith in pursuing an effective outcome of this debacle and we will continue to do so provided Queensland Health acts in a similar fashion.

#### **4.0 Specific Sections of the Bill**

The Bill proposes to amend the Act by inserting new sections 396A and 396B and associated amendments of the Regulation. The Bill does not propose any sunset provision that limits the ongoing applications of these inferior provisions.

##### *Section 396A -- Recovery of Health Employment Overpayments*

It is controversial to state that "overpayments" are occurring at the rate reported by Queensland Health. The feedback we have received from our members who have been recently advised of an overpayment by Queensland Health is that the vast majority of them will be disputing the "overpayments". In cases the QNU has assisted members with, where overpayments are alleged, these employees are also commonly underpaid and therefore not, in totality, in debt to Queensland Health.

Any provision that allows an automatic recovery from an employee's wages reverses the onus of responsibility for the employer to correctly pay an employee. The Bill proposes legislation that will create an onus on individual employees to establish that they have not been overpaid prior to the employer exercising their unilateral right to withhold monies from an employee's pay.

Employers have not had the ability to unilaterally take monies from an employee's pay under Queensland industrial law for the very reason that such a power is open to abuse. The linkage of this unilateral right to the current Queensland Health payroll debacle is totally unfair and unreasonable on Queensland Health employees. Queensland Health employees will be financially disadvantaged by the proposed change to this section of the Act. The experience of Queensland Health employees throughout the payroll debacle has been that considerable underpayment of wages has occurred and employees have been financially disadvantaged as a consequence.

Not only is this impact felt by the employee having insufficient funds to meet their needs throughout the pay fortnight but they also suffer consequential costs in the form of fees and charges imposed upon them by their financial institutions when there are insufficient funds in their accounts to pay direct debits they have arranged.

#### Absence related overpayments

The government claims that approximately \$1.7million of overpayments occurs each fortnight on average across Qld Health. Queensland Health has accepted that a large proportion of this amount is related to absences from work, such as sick leave, in the final days of a pay fortnight that are not being adjusted in the pay system prior to the close of the pay fortnight due to insufficient time to process such absences. Importantly, there currently exists a power under the Act which allows Queensland Health to recover these monies. Section 396 of the Act and Section 12 of the Regulation provide that Queensland Health can deduct up to 25% of an employee's wages to recover monies which the employee was overpaid because of an absence related overpayment.

The QNU has been aware of absence related overpayments occurring since the early period of the payroll debacle commencing in 2010 and has proposed to Queensland Health on a number of occasions to establish a process consistent with the current provisions of the Act, to recover such overpayments in the following pay fortnights.

For reasons unknown to the QNU Queensland Health has consistently declined to establish such a process. In our view, the adoption of this process would negate the need for the proposed changes to the Act.

#### Other types of overpayments

The remaining errors in an employee's pay are related to the system or processing. These errors are beyond the control of employees and not always obvious to an employee due to the poorly designed payslips and the fact that the majority of nurses are shift workers whose pay changes each fortnight. These errors are also often not immediately obvious to Queensland Health. It would not be unusual

for Queensland Health payroll staff to discover such system or process errors in an employees' pay some time after the error, or errors, have occurred.

In the QNU's view it is heavy handed to effect legislative change of a longstanding employee protection to deal with the small number of overpayments that are not absence related. We recognise that overpayments represent a problem for Queensland Health, but we also point out that underpayments still occur particularly in the last weekend of the roster due to staff swapping shifts. Ongoing underpayments remain of great concern to members.

#### 25% recovery amount

The proposal contained in the Bill to give Queensland Health the right to automatically recover up to 25% of "an amount otherwise payable at the time" to an employee is not fair and reasonable as the error is totally beyond the control of the employee affected. The term referred to in the proposed amendment to the Regulation: "the amount that otherwise would be paid", (new regulation 12A) is not defined.

An example that highlights how unfair and unreasonable an automatic recovery from wages could be is if the recovery of an overpayment were to occur in the pay of a nurse or midwife about to commence six weeks recreation leave (this being the annual entitlement to such leave for a nurse or midwife working continuous shift work).

In this scenario, "the amount that otherwise would be paid" could be reasonably interpreted to be the full holiday pay, including leave loading. Clearly, Queensland Health could significantly disadvantage and financially embarrass such an employee by automatically withholding up to 25% of the employee's holiday pay. The employee would most likely not be unaware that such a deduction had occurred until they had commenced their leave and tried to access funds from their bank account.

#### Change in pay date proposal

The proposal by Queensland Health to change the pay date must also be taken into account when considering the necessity of this change. The change in pay date, if implemented, will allow the time needed between the end of the roster period and the pay date to enable the correct payroll data to be entered in the pay system and, therefore, obviate the need to automatically deduct overpayments.

Members of the QNU have had their pays subjected to so much uncertainty since the failed implementation of the payroll system that we urge the Committee to consider evaluating the change in the pay date before proceeding with this proposal.

### Section 396B – Recovery of Health employment transition loans

This provision would be obsolete if the current payroll system functioned as effectively as the system it replaced. As the current pay date arrangements existed for over 15 years under the previous payroll system it would surely be reasonable to expect any new pay system to accommodate such pay date arrangements.

Moving the pay date for Queensland Health employees does not address the fundamental failing of the new system and will cause significant difficulties over and above any compensation through a transition loan.

The overwhelming majority of Queensland Health employees have ongoing direct deductions linked to their pays through their financial institutions. Every employee with such deductions will need to make arrangements with their financial institution to vary any direct deductions linked to their pay as a consequence of any change in pay date. The Bill does not define the term “transition loan”. However, the QNU understands the Australian Tax Office would consider such a “loan” a fringe benefit that would attract Fringe Benefits Tax. This is potentially a significant cost that Queensland Health will have to meet.

## **5.0 Conclusion**

The Queensland economy and its health system relies on its dedicated workforce. As a trade union we will continue to promote and protect the industrial and professional interests of our members who provide the care that Queenslanders expect and deserve. We therefore ask the Attorney-General and Minister for Justice to withdraw this Bill immediately and engage Queensland Health workers and their representatives in meaningful discussions about appropriate recovery of overpayments.

## **6.0 References**

*Penalties and Sentences and Other Legislation Amendment Bill 2012 Queensland.*

Queensland Parliament (2012) Record of Proceedings 11 July.