

From: Emma Patton [<mailto:emma.patton@nswact.lasa.asn.au>]
Sent: Thursday, 4 August 2016 9:43 AM
To: Chambers - Roe C; AMOD
Cc: Geoff Liggins; Anna-Maria Wade
Subject: AM2014207 and AM2014/204 - Witness Statements - ACE

Dear Commissioner Roe,

Please find attached four witness statements lodged by the Aged Care Employers in regards to the *Nurses Award 2010* and *Health Professionals and Support Services Award 2010* in the four year modern award review process.

Kind regards,

Emma

Emma Patton | National Manager, Employment Relations
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BEFORE THE FAIR WORK COMMISSION

Fair Work Act 2009

4 yearly review of modern awards

Group 2 Awards

Nurses Award 2010 **(AM2014/207)**

Health Professionals and Support Services Award 2010 **(AM2014/204)**

WITNESS STATEMENT OF JOHN FAVALORO

On 1 August 2016, I, John Favaloro of Level1, 3 Rider Boulevard, Rhodes NSW 2138, Human Resources Manager, state as follows:

1. I am the Human Resources Manager at Churches of Christ in NSW of which Living Care is one of its Ministries. I have been with the organisation since 30 January 2012.
2. An overview of the Living Care Ministry of the organisation is as follows:
 - There are 9 Residential Care facilities with 820 beds
 - 8 Retirement Villages with approximately 300 beds
 - 6 Home Care Regions across NSW serviced by Living Care with over 507 approved aged care packages.
 - Churches of Christ in NSW has a total employee number of 1,188 with the Living Care Ministry operations containing 1,045 employees of this total.
3. The Living Care organisation currently employs employees (to whom the *Nurses Award 2010* and/or the *Health Professionals and Support Services Award 2010* would otherwise apply) under the Living Care Enterprise Agreement 2014 (EA). A copy of the EA is attached to this Statement.
4. I am aware that Aged Care Employers seek to change the rostering clauses of the *Nurses Award 2010* and the *Health Professionals and Support Services Award 2010* to enable an employer and employee to agree to a roster change without the employer having to provide 7 days' notice of the agreed roster change to the employee (where the request is initiated by the employer). In other words, currently, as I understand it, if an employer requests a roster change of an employee, and an employee agrees to that roster change, the

employer must still give the employee 7 days' notice of the roster change (notwithstanding their agreement and notwithstanding that the roster change may need to occur within those 7 days).

5. I make this Statement in support of the rostering change sought by Aged Care Employers.

6. Although, given the terms of the EA, my organisation does not have this problem and restriction, if such a restriction were to be applied to my organisation, I would consider it very restrictive, and likely unworkable, for the following reasons:

(a) The organisation cares for aged, fragile and often vulnerable members of the community in our residential care facilities or through our Home Care services. In most cases this requires 24 hour care, 7 days a week and it is critical that qualified, experienced and capable staff is on hand to provide this specialist care at short notice when required.

In instances of unplanned leave, unavailability of staff or non – notification of non-attendance to a scheduled shift it is critical that shift changes are made at short notice of less than 7 days, in the interests of the resident or consumer and the organisation.

(b) Unexpected surge in resident care needs due to influx of new residents or medical emergencies/needs affecting residents and consumers

(c) Spike in simultaneous personal, bereavement/compassionate, domestic violence; child care or dependant care staff leave situations

(d) Urgent need to backfill staff or cover risk situations such as essential training staff at short notice due to identified risk that needs careful care and management by all staff (examples may include contagious disease circumstances; multiple WHS incidents or injury, staff or resident transport issues, sudden loss of experienced staff exits; staff and resident conflicts requiring additional management and resourcing.

(e) Unanticipated recruitment delays and staff disputation issues etc.

7. I am aware that employee's will be absent from work for a variety of reasons beyond or other than just personal/family illness or emergency. The reason for the employee's absence is not really the issue, i.e. the absence itself is the issue. If an employee is absent, their rostered shift needs to be filled to ensure on-going care to the residents is maintained (whether that be direct care, or tasks relating to, ancillary to, or impacting upon, that care). From my experience at the organisation, employees have called in to advise that they will be absent for a shift on short notice (i.e. less than 1-2 days) or they cannot be contacted to be allocated additional shifts due to other absences or surge in care needs for the following reasons:

- (a) Casual or part time employee unavailability for additional shifts required to be worked
- (b) Difficulty or inability to contact usually available employees requiring reshuffling/rescheduling of shifts at very short notice to match the appropriately skilled staff required to service the particular care and medical needs of the resident and consumer, i.e. matching the right staff to the right resident and consumer service requirements.
- (c) In Home Care a 7 day notice period is not feasible, as consumers demands dictate that changes to scheduled visits can happen at any time due to their circumstances. For example, we cannot give 7 day notice to a care worker or Registered Nurse of a cancelled visit if the consumer goes into hospital tonight.



John Favaloro

Date: 1 August 2016

BEFORE THE FAIR WORK COMMISSION

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Group 2 Awards

Nurses Award 2010 **(AM2014/207)**

Health Professionals and Support Services Award 2010 **(AM2014/204)**

WITNESS STATEMENT OF KAREN FOSTER

I, Karen Foster of Level 3, The Strand, 72-80 Marine Parade, Coolangatta, QLD), Director People and Culture state as follows:

1. I am the Director People and Culture at Feros Care (**the organisation**). I have been with the organisation since 28 November 2011.
2. An overview of the organisation is as follows: Feros Care operates Feros Village Bangalow, a 60 bed high care residential facility; Wommin Bay, a 70 bed low care residential facility and Feros Village Byron Bay, a 40 bed low care residential facility. Feros Care also provides a range of in-home, community care and health and wellness services delivered to care-recipients in their own home. Feros currently has 651 employees and operates nationally. In addition to personal care staff we employ Registered Nurses and Health Professionals and Support Services staff in the community and also at our residential villages.
3. The organisation currently employs employees (to whom the *Nurses Award 2010* and/or the *Health Professionals and Support Services Award 2010* would otherwise apply) under the *Feros Care, NSWNMA, HSU NSW Enterprise Agreement 2014-2017 (the EBA)*.
4. I am aware that Aged Care Employers seek to change the rostering clauses of the *Nurses Award 2010* and the *Health Professionals and Support Services Award 2010* to enable an employer and employee to agree to a roster change without the employer having to provide 7 days' notice of the agreed roster change to the employee (where the request is initiated by the employer). In other words, currently, as I understand it, if an employer requests a roster change of an employee, and an employee agrees to that roster change, the

employer must still give the employee 7 days' notice of the roster change (notwithstanding their agreement and notwithstanding that the roster change may need to occur within those 7 days).

5. I make this Statement in support of the rostering change sought by Aged Care Employers.
6. Although, given the terms of the EBA, my organisation does not have this problem and restriction, if such a restriction were to be applied to my organisation, I would consider it very restrictive, and likely unworkable, for the following reasons:
 - (a) Feros Care would be unable to meet the needs of our clients who require a service that is flexible, responsive and able to meet changes to their needs and requirements at short notice.
 - (b) If Feros Care was unable to backfill a Registered Nurse at short notice at Feros Village Bangalow, the facility would legally be unable to operate as a Registered Nurse must be available 24 hours a day.
7. I am aware that employee's will be absent from work for a variety of reasons beyond or other than just personal/family illness or emergency. The reason for the employee's absence is not really the issue, ie the absence itself is the issue. If an employee is absent, their rostered shift needs to be filled to ensure on-going care to the residents is maintained (whether that be direct care, or tasks relating to, ancillary to, or impacting upon, that care). From my experience at the organisation, employees have called in to advise that they will be absent for a shift on short notice (ie less than 1-2 days) for the following reasons:
 - (a) Sudden resignation whereby an employee walks off the shift
 - (b) An employee is required to attend Jury Duty
 - (c) An employee needs to take immediate compassionate leave due to a family member being taken seriously ill
 - (d) An employee needs to return home to attend to, or cannot leave a sick/injured pet
 - (e) An employee has to take carer's leave to look after a sick child/parent, etc.
 - (f) An employee has a non-work related injury and is unable to work their rostered shift
 - (g) The employee's availability to work suddenly needs to change due to personal or family commitments

- (h) An employee has not arrived for work, is uncontactable and considered to be absent without approved leave
- (i) An employee is involved in or party to a domestic violence incident and they are waiting for the police/at the police station
- (j) An employee's car breaks down and they are unable to travel to work or use public transport
- (k) An employee cannot afford petrol for their vehicle and can't use public transport
- (l) An employee's vehicle registration has expired and they cannot afford to renew it
- (m) An employee's car has been stolen or they are involved in some other criminal matter and they are waiting for the police to attend/ at the police station
- (n) An employee has suddenly lost their driver's licence due to DUI or speeding and they are unable to travel to work or use public transport
- (o) An employee arrives at a client's residence to take them on a social outing and the client is unable to physically get into the employee's car (i.e. 4 wheel drive)
- (p) Traffic incident en route preventing the employee travelling to a client's home
- (q) Client refuses an employee entrance at their door for a variety of reasons including does not like the employee and does not want them in their house
- (r) Client changes, cancels or moves their service on the morning or within 7 days of the scheduled service
- (s) Services are cancelled due to a client's unplanned admission to hospital or respite care, or client is deceased
- (t) Client's needs suddenly change requiring a higher skilled employee to attend to the service than the employee originally rostered
- (u) A new or unscheduled client has an urgent need requiring an experienced staff member to attend and another employee to backfill the staff member's original client
- (v) The employee's work visa is suddenly cancelled or changed and the employee no longer has the right to work in Australia

- (w) An employee's professional registration is suspended or suddenly cancelled
- (x) An employee will be late returning from holiday due to being unable to travel (i.e. ash cloud preventing air travel)
- (y) Natural disaster or bad weather preventing an employee from attending their place of work or being able to drive to a client's home
- (z) An employee wins the lottery or a competition and will not be attending work



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Karen Foster

Date: 25 July 2016

BEFORE THE FAIR WORK COMMISSION

Fair Work Act 2009

4 yearly review of modern awards

Group 2 Awards

Nurses Award 2010 (AM2014/207)

Health Professionals and Support Services Award 2010 (AM2014/204)

WITNESS STATEMENT OF KALENA JEFFERSON

I, Kalena Jefferson of 45 Barcom Street, Merrylands, General Manager People and Culture, state as follows:

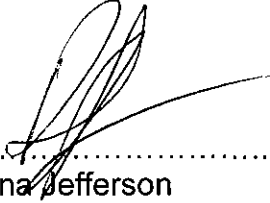
1. I am the General Manager, People and Culture at Southern Cross Care (NSW & ACT) ("SCC") (**the organisation**). I have been with the organisation since around April 2015.
2. An overview of the organisation is as follows: SCC is a provider of home care, residential care and independent living services. SCC has 31 aged care facilities across metropolitan and regional NSW and ACT. SCC employees 1900 staff.
3. The organisation currently employs employees (to whom the *Nurses Award 2010* and/or the *Health Professionals and Support Services Award 2010* would otherwise apply) under the *Southern Cross Care (NSW & ACT) Enterprise Agreement 2016* (**the EBA**).
4. I am aware that Aged Care Employers seek to change the rostering clauses of the *Nurses Award 2010* and the *Health Professionals and Support Services Award 2010* to enable an employer and employee to agree to a roster change without the employer having to provide 7 days' notice of the agreed roster change to the employee (where the request is initiated by the employer). In other words, currently, as I understand it, if an employer requests a roster change of an employee, and an employee agrees to that roster change, the employer must still give the employee 7 days' notice of the roster change (notwithstanding their agreement and notwithstanding that the roster change may need to occur within those 7 days).

5. I make this Statement in support of the rostering change sought by Aged Care Employers.
6. Although, given the terms of the EBA, my organisation does not have this problem and restriction, if such a restriction were to be applied to my organisation, I would consider it very restrictive, and likely unworkable, for the following reasons:
 - (a) Shifts would not be covered when staff do not come in leaving the teams running short.
 - (b) It may leave nursing cover at unacceptably low levels.
 - (c) Agency staff may have to be used to cover the short notice, being more expensive and lacking continuity of care aspects like existing staff have.
 - (d) We would potentially have to run with un-rostered casuals who could attend at short notice.

In short, it would be very problematic, depending upon the circumstances.

7. I am aware that employee's will be absent from work for a variety of reasons beyond or other than just personal/family illness or emergency. The reason for the employee's absence is not really the issue, ie the absence itself is the issue. If an employee is absent, their rostered shift needs to be filled to ensure on-going care to the residents is maintained (whether that be direct care, or tasks relating to, ancillary to, or impacting upon, that care). From my experience at the organisation, employees have called in to advise that they will be absent for a shift on short notice (ie less than 1-2 days) for the following reasons:
 - (a) Some staff do not provide a reason for their absence choosing to not attend work without a phone call or prior notice. This occurs on a regular basis in many of our facilities requiring a shift to be backfilled with short notice.
 - (b) Some staff take unauthorised absences such as taking unpaid leave at short notice without prior approval. There will often be no reason provided for this leave. This will require last minute roster changes to ensure enough staff are on the shift.
 - (c) Abandonment of duties occurs approximately 20 times a year when staff abandon their duties and do not return to work requiring their shifts to be refilled at short notice whilst the abandonment process occurs. This process takes up to two weeks to finalise and rosters will usually be out and need changing to backfill the abandoned employee shifts
 - (d) Staff sometime have a non-urgent but important need to meet a tradesperson but not an emergency.

(e) Attending a pet health matter would not always be considered a family emergency is still an emergency situation.

A handwritten signature in black ink, appearing to read 'Kalena Jefferson', is written over a horizontal dotted line.

Kalena Jefferson

Date: 26 July 2016

BEFORE THE FAIR WORK COMMISSION

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Group 2 Awards

Nurses Award 2010 (AM2014/207)

Health Professionals and Support Services Award 2010 (AM2014/204)

WITNESS STATEMENT OF MARK DOUGLAS

On 1 August 2016, I, Mark Douglas of 90 Werombi Road, Grasmere NSW 2570, Human Resources Manager, state as follows:

1. I am the Human Resources Manager at Carrington Centennial Care Ltd (**the organisation**). I have been with the organisation since around 23 March 2015.
2. An overview of the organisation is as follows: four aged care facilities with a total of 388 beds. As at today's date, we employ 442 staff in our departments of Residential Care, Hotel Services (housekeeping, laundry, catering, and restaurant operations), Property Services (maintenance and gardening), Community Care, Administration, and Independent Living (retirement village).
3. The organisation currently employs employees (to whom the *Nurses Award 2010* and/or the *Health Professionals and Support Services Award 2010* would otherwise apply) under the Carrington Centennial Care Ltd, NSWMA and HSU NSW Enterprise Agreement 2014 – 2017 (**the EBA**). A copy of the EBA is attached to this Statement.
4. I am aware that Aged Care Employers seek to change the rostering clauses of the *Nurses Award 2010* and the *Health Professionals and Support Services Award 2010* to enable an employer and employee to agree to a roster change without the employer having to provide 7 days' notice of the agreed roster change to the employee (where the request is initiated by the employer). In other words, currently, as I understand it, if an employer requests a roster change of an employee, and an employee agrees to that roster change, the employer must still give the employee 7 days' notice of the roster change

(notwithstanding their agreement and notwithstanding that the roster change may need to occur within those 7 days).

5. I make this Statement in support of the rostering change sought by Aged Care Employers.
6. Although, given the terms of the EBA, my organisation does not have this problem and restriction, if such a restriction were to be applied to my organisation, I would consider it very restrictive, and likely unworkable, for the following reasons:
 - (a) Short notice absences that are not a result of illness or emergency do happen on a regular basis. Our casual pool is often already booked filling annual leave absences. Therefore, it is common that our only opportunity to backfill a position is to ask a permanent employee to cover the shift.
 - (b) We have a large number of permanent employees who would be happy to work additional hours at short notice to maximise their wages, and consider such an opportunity a reward for their performance.
 - (c) If employees in non-critical positions were absent, while not an emergency it has potential to temporarily increase workloads on the remaining employees and impede our ability to complete the following:
 - i. Non-essential clinical record keeping;
 - ii. Physiotherapy services;
 - iii. Laundry services;
 - iv. Leisure and lifestyle / recreation services;
 - v. Housekeeping services; and
 - vi. Catering and hospitality services.
 - (d) While not serious and imminent, working with less employees in many areas of aged care creates a risk of work-related injuries as workloads and the temptation by employees to take 'short cuts' is increased.
7. I am aware that employee's will be absent from work for a variety of reasons beyond or other than just personal/family illness or emergency. The reason for the employee's absence is not really the issue, ie the absence itself is the issue. If an employee is absent, their rostered shift needs to be filled to ensure on-going care to the residents is maintained (whether that be direct care, or tasks relating to, ancillary to, or impacting upon, that care). From my experience at the organisation, employees have called in to advise that they will be absent for a shift on short notice (ie less than 1-2 days) for the following reasons:

- (a) On Saturday 22 August 2015, a permanent employee in Residential Care advised she was unavailable for her rostered shift because she was going to her daughter's netball grand-final.
- (b) On Wednesday 6 April 2016, a permanent employee in Hotel Services cancelled her shift so that she could support her elderly mother during a debt dispute with Centrelink that resulted in a debt collector knocking on the employee's mother's door.
- (c) On Monday 20 June 2016, a permanent employee in Residential Care did not attend her shift because she was attending an educational course in computing and administration.
- (d) On Thursday 14 July 2016, a permanent employee in Hotel Services advised us that should not be attending her shift on Friday 15 July 2016 so that she could visit a Centrelink office to resolve an issue with her carer's pension.



Mark Douglas

Date: 1 August 2016