



Matter No:

WHS / 2024 / 221

Form 73A – Notice of WHS dispute

INDUSTRIAL REGISTRAR

05 SEP 2024



Work Health and Safety Act 2011, s 102B

Information

- Use this form to notify of a WHS dispute.
- Once filed, this notice must be **immediately** served on all other parties to the dispute.
- **This Notice will be published on the QIRC website pursuant to s 102B(3) of the Work Health and Safety Act 2011.**
- If a relevant union for a worker affected by the WHS matter not already named as a party wish to participate in the resolution of the dispute, they may notify the Industrial Registrar in writing.
- Please read this form carefully and complete all relevant sections.
- Documents which are longer than 30 pages in length must be provided to the Industrial Registry in hard copy before it will be accepted for filing.
- For further information on please refer to the website www.qirc.qld.gov.au or contact the Industrial Registry on 1300 592 987 or via email at qirc.registry@qirc.qld.gov.au.

Notification

Notice is hereby given of a dispute in accordance with s 102B of the *Work Health and Safety Act 2011*.

Has a *Form 74 – Application for WHS review* been filed in relation to the matter/s in dispute? No Yes [Matter No. WHS/ ___/___]

Notifier	UnitingCare Queensland Limited
AND	
Respondent	Queensland Nurses and Midwives' Union of Employees and another

If there are more parties to the WHS dispute, please complete a **Form 1 – Parties List** and file it together with this form.

1. Particulars of the party notifying of the dispute

Name:	UnitingCare Qld Limited		
Postal/Service address:	Care of MinterEllison Level 22, 1 Eagle Street		
	Suburb/Town	Brisbane Queensland	Postcode 4001
Phone number:	As below	Mobile number:	
Email address:	As below		
Name of contact person:	Nicole Hanlon and Deanna McMaster (MinterEllison)		
Direct phone number:	07 3119 6126 (ME)	Mobile number:	0409593567(NH)/0408586607(D)
Direct email address:	deanna.mcmaster@minterellison.com; nicole.hanlon@ucareqld.com.au		

2. Particulars of the other party to the dispute

Name:	Queensland Nurses and Midwives' Union of Employees		
Postal/Service address:	GPO Box 1289		
	Suburb/Town	Brisbane Q	Postcode 4101
Phone number:	(07) 3840 1444	Mobile number:	
Email address:	qnmu@qnmu.org.au		
Name of contact person:	Kim Ramsdale		
Direct phone number:		Mobile number:	
Direct email address:	kramsdale@qnmu.org.au		

3. Workplace where dispute exists

Blue Care Brassall Aged Care Facility

4. WHS matter subject of the dispute**This dispute (as defined in s 102A of the *Work Health and Safety Act 2011*) is in relation to:**

[Please pick one or more of the options below]

<input checked="" type="checkbox"/>	A work group determination matter.
<input checked="" type="checkbox"/>	A work group variation matter.
<input type="checkbox"/>	Access to information by a health and safety representative under s 70(1)(c) of the Act.
<input type="checkbox"/>	The giving of a notice or information to a health and safety representative under s 70(1)(cb) or (cc) of the Act.
<input type="checkbox"/>	A request by a health and safety representative for a person assisting the representative to have access to the workplace under s 70(1)(g) of the Act.
<input type="checkbox"/>	A matter mentioned in s 72(2)(aa), (a) or (b), or s 72(4)(a), (b) or (c) of the Act relating to training for a health and safety representative.
<input type="checkbox"/>	A health and safety committee matter.
<input type="checkbox"/>	A matter about work health and safety that is an issue to which Part 5, Division 5 (Issue Resolution) of the Act applies.
<input type="checkbox"/>	An issue about cessation of work under Part 5, Division 6 (Right to cease or direct cessation of unsafe work) of the Act.
Does this dispute relate to any of the following decisions made by an Inspector?	
<input type="checkbox"/>	s 54(5) – Negotiations regarding an agreement
<input type="checkbox"/>	s 76(6B) – Regarding a health and safety committee

5. Compliance powers

Has an inspector been appointed to assist the parties reach an agreement or resolve the dispute?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, was a decision made by an inspector to exercise, or not to exercise, compliance powers under Part 10 of the Act subject to review under Part 12 of the Act?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

6. Issues in dispute

Please outline the issues in dispute between the parties:

[Please note that any details you provide will be published as part of this Notice]

Please attach a schedule if more room required

See attached.

7. Briefly state the relevant industrial instrument/s affected (e.g. award, agreement, determination) OR the industry in which the dispute arose and/or type of work being undertaken by those in dispute

Aged Care

8. Signature of the party notifying of the WHS dispute

Signature:	
Name:	Deanna McMaster, Partner, MinterEllison
Position/Capacity:	Solicitor for the Applicant
Date:	5 September 2024

Schedule

History

1. From approximately 9 July 2024, the Applicant and the Queensland Nurses and Midwives Union (QNMU) and the United Workers Union (UWU) have been in discussions regarding HSRs and HSR elections, with requests to vary the existing work groups arising around early August 2024.
2. On around 16 August 2024, Steve Platzer, Principal Inspector, South West Gold Coast, Work Health and Safety Queensland, contacted the Applicant to advise that the QNMU had requested issue resolution regarding negotiation of work groups for HSRs and to arrange a meeting at Blue Care Brassall Aged Care Facility on 20 August 2024.
3. On 19 August 2024, representatives of the Applicant and the QNMU and UWU met and discussed an alternative for the work groups. Representatives for both UnitingCare Queensland and the QNMU and UWU indicated during that meeting that this proposal (which involved HSRs being elected across three sites as a work group) had not yet been discussed with employees.
4. On 20 August 2024, representatives of the Applicant and the QNMU and UWU met with Inspector Platzer at Brassall. During that attendance:
 - (a) Inspector Platzer advised he was entering under section 160 of the *Work Health and Safety Act 2011 (WHS Act)*. He did not refer to section 54.
 - (b) The Applicant and the QNMU and the UWU engaged in discussions about the work group proposals.
 - (c) The Union parties were keen to avoid HSR roles across more than one Aged Care Facility, while the Applicant wanted HSRs to work across multiple (3) Aged Care Facilities. The Applicant informed the Inspector that consultation with the workforce was still to occur. The Union parties also indicated to the Inspector that they had not had the opportunity to consult with workers on the latest proposal discussed at the meeting.
5. On 23 August 2024, Inspector Platzer issued a 'determination of work groups' in which he made the following 'decision':
 - (a) two (2) work groups comprising of Nursing and Support Workers are to be represented by health and safety representatives;
 - (b) two (2) health and safety representatives and two (2) deputy health and safety representatives to be elected;
 - (c) the workplace to which the work groups will apply is located at 9 Charles Street, Brassall Qld 4305; and
 - (d) the businesses or undertakings to which the work groups will apply is Unitingcare Qld Limited trading as Blue Care Brassall Aged Care Facility (sic).

(purported decision)

Concerns with the purported decision of the Inspector

No exercise of power

6. Inspector Platzer advised he was in attendance at Brassall on 20 August 2024 under Part 9 of the WHS Act. It was understood that this meant an exercise of powers under section 160 of the WHS Act. The Inspector did not say he was entering for negotiations under section 54.
7. The Inspector did not correctly identify the power he was exercising when he attended at Brassall Aged Care, and he did not exercise nor carry out a role under section 54, including to attempt to assist the parties to agree on matters as required by that section. The Inspector therefore did not meet the requirements of the section.

No reasonable belief

8. Even if the Inspector had validly indicated his attendance was for the purposes of section 54, as a precondition to making a work group determination, the inspector is required to reasonably believe that the parties are unlikely to reach an agreement on a matter mentioned in subsection 54(3) within 7 days after the appointment.
9. The Inspector could not have held this reasonable belief given:
 - (a) As was expressed to him, the negotiations were still subject to the Applicant conducting consultation and feedback sessions with staff including with respect to its existing work group proposal, which is a matter to be taken into account in determining workgroups under the *Work Health and Safety Regulation 2011* (Qld) (**WHS Reg**) (see further below).
 - (b) The QNMU had not had the opportunity to speak with its members about the Applicant's proposal.
 - (c) As set out further below, once the Applicant had engaged in relation to these issues with its workers at Brassall, a further proposal was identified which is closer in substance to the original request of the QNMU.
 - (d) The Inspector failed to engage with the Applicant on 23 August 2024 to determine whether the parties were close to or likely to reach an agreement on the work group proposal.
10. On this basis no reasonable belief could be held as discussions about workgroups were ongoing with the workers directly affected by the proposal, who had not yet had an opportunity to express their views via consultation conducted by the Applicant. It was unreasonable for the Inspector to proceed when he was expressly advised this process was ongoing.

Matters to be taken into account not properly considered

11. Further, the purported decision did not properly take into account the required matters in Chapter 2, Division 1 of the WHS Reg:
 - (a) views of workers in relation to the variation/determination of work groups;
 - (b) the nature of any hazards at the workplace;
 - (c) the nature of any risks to health and safety at the workplace;
 - (d) the nature of each type of work carried out by the workers;
 - (e) the number and grouping of workers who carry out the same or similar types of work;
 - (f) the areas or places where each type of work is carried out;
 - (g) the extent to which any worker must move from place to place while at work;
 - (h) the diversity of workers and their work;
 - (i) the nature of the engagement of each worker, for example as an employee or as a contractor;
 - (j) the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or short-term;
 - (k) the times at which work is carried out;
 - (l) any arrangements at the workplace or workplaces relating to overtime or shift work.
12. In response to a request for reasons for the decision, WHSQ indicated:
 - (a) the decision was made due to the failure of negotiations under section 54 of the WHS Act.

- (b) the reasons for the decision are based on information gathered during the course of an inspector attempting to assist the parties to agree on matters in dispute.
13. Those reasons do not demonstrate that the factors required in the WHS Reg have been considered, particularly in circumstances where it is not clear how the Inspector would have known the views of the workers and other matters required by the WHS Reg at the time the decision was made.
 14. The variation proposed below better accounts for these matters as it has been proposed following discussions with workers from the Brassall location.

Request for variation to work group

15. The Applicant has now had the benefit of being able to engage with workers at Brassall about the work group proposal. Following those processes, the Applicant has proposed a variation to the work groups to the QNMU as follows:
 - (a) 2 work groups (comprising of 1) Nursing and Care Workers and 2) Support Workers at Brassall);
 - (b) 1 health and safety representative per work group or 2 health and safety representatives at Brassall.
16. The Applicant sought to try and agree this as a variation with the QNMU, UJU and workers. However, on 3 September 2024 representatives for the QNMU (and UJU agreed) indicated that they are 'happy with the determination made by the WHSQ' and would like to see a ballot for the elections held.
17. While the Applicant is of the view that seeking the variation effectively results in a trigger to discuss the proposed variation given section 52(4) of the WHS Act, given the recent amendments to the WHS Act, the impact of such a request (including in light of the Inspector's purported decision) is not entirely clear.
18. Given the position of the QNMU and UJU, and the requirements with respect to arranging elections under Part 5, Division 3 of the WHS Act, the Applicant respectfully requests that the Commission list the matter for conference urgently.
19. If agreement cannot be reached, than the Applicant says the Commission should decide to review the purported decision and set it aside and substitute it with the proposal above (under 102D(2) of the WHS Act).



Form 1 - Parties List


 INDUSTRIAL REGISTRAR

05 SEP 2024


 QUEENSLAND

Information

- Use this form to provide details of any additional named parties to an application/claim. Use a new form for each additional party.
- Please read this form carefully and complete all relevant sections.

First Applicant/Appellant/ or Claimant	UnitingCare Queensland Limited
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v

First Respondent or Defendant	Queensland Nurses and Midwives' Union of Employees
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Additional Party Details [use a new form for each additional party]

Additional Applicant/Appellant/Claimant number:

[second/third/fourth etc]

Additional Respondent/Defendant number:

Second [second/third/fourth etc]

Name of Party:	United Workers' Union, Industrial Union of Employees, Queensland		
Name of contact person:			
Postal address:	PO Box 3948		
	Suburb/Town	South Brisbane BC	Postcode 4101
Phone number:	07 3291 4600	Mobile number:	
Email address:	qldind@unitedworkers.org.au; qld@unitedworkers.org.au		

Party representative [if applicable]

Organisation:			
Name of contact person:	Amanda Duggan		
Postal address:	As above		
	Suburb/Town		Postcode
Phone number:		Mobile number:	
Email address:	amanda.duggan@unitedworkers.org.au		