

## Member representation

### Introduction

The QNU recognises the importance of every member's right to a fair hearing and representation. Members may seek advice and/or representation in lodging a complaint or grievance against their employer. The QNU, as a registered Union under the *Industrial Relations Act 1999* offers its financial members<sup>1</sup> a range of services including professional and industrial advice, legal assistance<sup>2</sup> and representation in workplace complaints and grievances.

The QNU believes that all health care organisations and employers should have a policy and procedures in place to assist nurses and midwives, including managers, to deal with making, receiving and responding to workplace complaints and grievances, including those about misconduct or corrupt conduct concerning another health professional/worker, a member of the public or patient.

The employer's procedures should include the steps the member must take when the complaint or grievance implicates an immediate supervisor or who to contact if the outcome of an investigation does not satisfy the member's concerns.

### Purpose

The purpose of this policy is to provide guidance to members who seek advice or representation in lodging a workplace complaint or grievance concerning an employer or another health professional/worker. Members should also see the QNU policies *Whistleblower Protection* and *Sexual Harassment*.

In all cases of member representation in disputes or grievances, due process and fairness are the central features.

### Who will the QNU represent?

The QNU will advise and assist financial members in lodging complaints or grievances depending on the nature of the matter. This may involve communications with the employer either in writing or verbally.

### Member expectations

When a member contacts the QNU they can expect the following:

- prompt response to their request for information and advice and replies to their communications
- a summary of the issues, clear advice, and a discussion of expectations
- advocacy on their behalf where they may have been denied or not received an employment entitlement
- an appropriate level of guidance and representation in relation the matter
- referral to the appropriate official with contact details

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1. Under QNU rule 16, unfinancial members are those who owe membership fees of three months. From this time, they are not entitled to any of the privileges of membership.
  2. The QNU Executive has decided that, unless it expressly determines otherwise, the QNU will only provide legal assistance on matters that arise during the course of a nurse's financial membership. The QNU will not provide legal advice for incidents which occurred before becoming a member.

- confidential treatment of the issues
- no approaches will be made to organisations or individuals without their knowledge
- QNU Officials will declare potential conflicts of interest and where a conflict of interest exists, remove themselves from any involvement in and access to material about the issue.

The QNU maintains confidence in the ability of all its officials to carry out their responsibilities competently. Members should expect and receive a similar quality and quantity of service and advice from relevant QNU officials. Therefore, the QNU allocates servicing matters to the relevant official based on the nature of the case and not on the basis of a member's personal preference for a specific individual.

## QNU expectations

The QNU expects that members will:

- maintain full financial membership of the QNU
- provide full information on the matters raised, including relevant correspondence and permit the QNU access to relevant documents and records
- ensure the QNU has sole carriage of the matter for which they have sought representation unless agreed otherwise
- follow the QNU's verbal and written advice in relation to the matter
- refrain from seeking a second opinion from another QNU official
- refrain from communicating with organisations or individuals regarding the matter if it is agreed the QNU is the single point of contact
- observe appropriate conduct and neither harass nor bully QNU officials or staff
- refrain from public comment unless such action is expressly authorised by the QNU official who is handling the matter
- refrain from making defamatory statements or speaking publicly or writing disparagingly about any person or organisation in relation to the issue including online social media such as Facebook, Twitter, Myspace etc
- maintain confidentiality.

## Guiding principles

The following principles guide the QNU process:

1. Any member who requests representation must complete a *Request for Representation* form and return it to the appropriate QNU office for processing. The QNU will only take action on receipt of this form.
2. The QNU will assess each case on its individual merits.
3. The QNU will advise the member of an appropriate course of action in relation to the matter.
4. The QNU reserves the right not to pursue matters which it holds to be unreasonable, unlawful, frivolous or vexatious.

The QNU will enquire into all legitimate complaints or grievances following due process. The QNU will inform the member of the process at all times. However, this does not preclude the QNU from offering advice regarding other, more appropriate assistance, such as referrals to other bodies where necessary.

On occasions, more than one member may make the same complaint or grievance that requires the QNU to act on their behalf at the same time. The QNU will uphold each member's right to a fair hearing and representation.

## Media comments

The QNU Secretary and Assistant Secretary are the only authorised spokespersons for general media comment. The QNU does not permit any member to comment to the media on any QNU related matter unless the Secretary, Assistant Secretary or their delegate has given them express permission to do so. Officials must operate in accordance with the QNU policy *Media Comment by Officials*.

## Member behaviour

The QNU reserves the right to limit or withdraw support for members whose behaviour makes it difficult or impossible for an official to handle their matter. These can include, but are not limited to:

- ignoring, or acting contrary to, the advice provided by the QNU
- arranging alternative representation or acting on external advice
- concealing or withholding relevant information from the QNU
- making unreasonable demands on the QNU such as frequent phone calls and/or visits, unrealistic expectations and directing the QNU in its actions

- making public comments about their matter without the authorisation of the QNU
- making defamatory statements about the QNU in any public forum including all forms of social media
- harassing or vilifying QNU staff or otherwise acting vexatiously.

## **Discontinuing support**

Where a member fails to comply with formal QNU advice regarding their behaviour or actions, the Secretary or Assistant Secretary may decide to withdraw or limit support for the member. The Secretary or Assistant Secretary will provide the member with a written statement of the matters that are prompting consideration of the withdrawal or limitation of support giving the member adequate opportunity to respond.

## **New members and pre-existing matters**

As a general principle, the QNU cannot take up pre-existing matters on behalf of new members. In this context, the QNU defines a new member as one who has a period of membership of less than three months. However, the QNU will not turn away any member without providing some assistance. From time to time, the Secretary may determine an exception, particularly in the following circumstances:

- where the matter also affects other existing QNU members
- where the matter affects a number of other employees who are prepared to join the QNU
- where the case may set an important precedent
- in cases of civil action for damages and appearances at coronial inquiries where the new member had no knowledge of any pending civil or coronial inquiry/inquiries prior to the date of joining. In these circumstances the new member needs to satisfy the Secretary that they had no knowledge of such pending action.

Where the new member experiences a problem within the first three months of membership, the QNU must determine the level of support it can offer to the new member. The Secretary will ensure that the relevant official carries out an assessment to determine:

- when the problem started (i.e. whether pre-existing)
- the extent of assistance required
- the potential cost to the Union
- the nurse's length of employment in the workplace.

The Secretary will decide on the extent of the assistance that the QNU will provide.

In such an instance, the QNU may decide to provide only limited direct assistance and refer new members to other sources for help. Alternatively, the QNU may decide to fully service major matters for new members. In this case, the QNU may require new members to pay the equivalent of two years' membership fees that cover one year prior to the date they join and one year following the date they join. Payment of such fees will entitle these members to all the benefits of QNU membership for the two-year period, including full industrial coverage and access to all the QNU's services.

If the QNU Secretary's decision does not satisfy the new member, the new member may appeal to the QNU Council for a review.

## **In what matters will the QNU represent a member(s)?**

The QNU provides advice and/or representation to financial members for industrial and professional issues arising out of the member's employment, e.g.

- termination of employment
- workers' compensation
- professional misconduct and disciplinary proceedings
- award entitlements
- contract of employment matters.

For workers' compensation appeals, the QNU will provide legal representation subject to the receipt of legal advice from the QNU's solicitors confirming the likely success of such an action/appeal. The QNU will assess applications for review to Q-COMP and provide assistance where appropriate.

## **Member complaints/grievances against employers.**

The QNU may represent members who make a legitimate complaint or grievance where:

- the employer's decision, action or inaction has caused the complaint or grievance or has affected the

- member's ability to perform their work
- the employer has taken action against the member
- the employer has not dealt with the matter appropriately.

If a complaint or grievance gives rise to a dispute, the dispute exists between the member and the employer even if the subject of the dispute is the actions of another nurse in a more senior position.

In these circumstances, the QNU's objective is to secure an outcome that is appropriate and encourages the employer to adopt fair management practices, and which does not cause an unwarranted detriment to the employment conditions or status of any QNU member.

The QNU will provide advice and advocacy as required for the member who has the grievance. The QNU will advise the nurse in the management position who is acting on behalf of the employer that they should seek advice from their appropriate management representative. It is the member with the grievance that the QNU is representing in this situation.

If, however, as a result of the grievance process that the member initiated, the employer takes some form of action against the nurse in the management position and that nurse is also a member, the QNU may legitimately represent that member in a subsequent action. This would become a new action with a quite separate process from the original grievance.

The QNU expects that all members will act responsibly in relation to their union membership by maintaining confidentiality in any negotiations or discussions that they may be party to, and to recognise the distinction between their role as an employee and an employee who is operating in a management position.

### **Member complaints/grievances against another health professional/worker**

If the complaint relates to a conduct, competency or health issue regarding another nurse which could result in the Nursing and Midwifery Board of Australia (NMBA) (Qld Branch) limiting or suspending professional registration, the QNU will encourage the member to raise the complaint with their employer in the first instance. The QNU will assist the member with the procedures.

As a general rule, members should exhaust all internal procedures before they approach any external agency such as the NMBA (Qld Branch) or the Health Quality and Complaints Commission (HQCC). A member should only make a complaint directly to an external agency in circumstances where the member is firmly of the view that an immediate risk to patient health and safety exists.

### **Member complaints/grievances against another member**

The QNU will not represent a member against another member in a grievance or dispute settlement process. In these cases, the QNU may provide general advice as to the nature of the dispute settlement process and advice on the drafting of documents relevant to the dispute settlement process.

The QNU will not forward a member's complaint against another member directly or indirectly to an employer or any statutory or other body.

Where a member has information regarding the conduct of another worker that might fall within the ambit of a 'public interest disclosure', the QNU will advise the member in accordance with the QNU policy *Whistleblower Protection* and the *Whistleblowers Protection Act 1994*.

### **Sexual harassment and anti-discrimination matters**

The QNU will support any member who believes they have been sexually harassed. The level of support is at the discretion of the QNU and may include general advice, representation to the employer, representation before the Anti-Discrimination Commission (ADCQ) or other statutory body or court.

In matters before the ADCQ the QNU, at its discretion, will only support action by members against the employer. In determining the level of support, the QNU will take into account the relevant action/inaction of the employer.

Members who wish to take action against individuals other than employers before the ADCQ may do so but the member bears the costs of such action.

Members who are accused of sexual harassment have the right to seek advice and assistance from the QNU to ensure that their rights and entitlements are appropriately protected. In these cases, the QNU will not defend actions before the ADCQ. The QNU will advise the member that it does not condone sexual harassment and

will refer the member to the QNU's *Sexual Harassment* policy.

Members have the right to appeal decisions where the QNU has exercised its discretion to the QNU Council through the Secretary.

## **Where can members make complaints to?**

In the first instance, the QNU will assist the member(s) with advice on the relevant process for making a complaint and will suggest the appropriate statutory or other body if necessary.

The QNU may make formal complaints to relevant statutory bodies, government departments or courts of competent jurisdiction in relation to:

- matters affecting the safety and welfare of the public
- as legislation mandates (such as the *Child Protection Act 1999*).

Where a member has a legitimate complaint about the standards of care in a health agency or facility, the QNU may raise these concerns with the employer on behalf of the member. If the parties cannot resolve the issue at the workplace, the QNU will encourage the member to report the matter either verbally or in writing to the appropriate statutory or other body.

If the matter relates to an immediate health and safety risk to patients or workers, the QNU will encourage members to seek immediate representation. The QNU will then decide whether to report the matter immediately to the employer or a statutory or other body.

Where a member requests QNU involvement in lodging complaints concerning another health professional/worker with a statutory or other body for example the NMBA (Qld Branch) or another regulatory body or the HQCC, the QNU may offer advice with regard to drafting the complaint. It is the member's responsibility to write the complaint and forward same to the statutory or other body.

The QNU may provide representation where appropriate in the following tribunals:

- Fair Work Australia (FWA), Queensland Industrial Relations Commission (QIRC), State and Federal Courts
- magistrates' courts
- Medical Assessment Tribunals and Industrial Magistrates Court (for WorkCover matters)
- NMBA (Qld Branch)
- coronial inquests (when the member is summoned)
- Crime and Misconduct Commission
- Anti Discrimination Commission/Tribunal
- specially constituted commissions of inquiry.

Representation may be provided by either a Union official (eg an Organiser, Industrial Officer or Legal Officer) or by the Union's external solicitors.

If a member is successful in recovering costs in any proceedings, the QNU will seek reimbursement from the member of any costs paid by the QNU on the member's behalf in respect of such proceedings.

The QNU will not seek reimbursement from the member if costs are not recovered in the proceedings. Furthermore, the QNU will not pay for any costs which are unable to be recovered from the other party in this event.

The QNU will not pay for costs for other parties if they are awarded against a member. (Officials always discuss these matters with the member involved and advise them in writing of the Union's determination with respect to the matter of costs.)

The QNU will not provide legal representation through its solicitors for the following types of matters:

- criminal proceedings
- actions by members for damages
- for defamation
- general civil proceedings.

In some circumstances, the QNU's solicitors may also offer a free face-to-face consultation, but in general, the costs of any legal work required beyond an initial telephone consultation are the responsibility of the member.

The QNU's solicitors offer QNU members discounts on their usual fees for a range of matters.