



# DECISION

*Fair Work Act 2009*

s.789FC - Application for an order to stop bullying

**Mr Peter Ryan**

v

**Returned & Services League of Australia (Queensland Branch) (RSL Queensland)**  
(AB2017/105)

DEPUTY PRESIDENT ASBURY

BRISBANE, 6 FEBRUARY 2018

*Application for an FWC order to stop bullying – Jurisdictional objection – Applicant is a volunteer – Identification of entity for which volunteer services provided – Whether Applicant carries out work for a person conducting a business or undertaking – Whether applicant is at work in a constitutionally covered business – Finding that volunteer services are provided for RSL Queensland – Finding that RSL Queensland conducts business or undertaking for which Applicant volunteers – Finding that Applicant is at work in a constitutionally covered business – Jurisdictional objection dismissed.*

## 1. Overview

[1] Mr Peter Ryan applies under s. 789FC of the *Fair Work Act 2009* (FW Act) for an FWC order to stop bullying (the 2017 application) against the Returned & Services League of Australia (Queensland Branch) (RSL Queensland) and 14 persons named in the application who are Directors of RSL Queensland (collectively the Respondents). Mr Ryan asserts that as provided in s. 789FC(1) of the FW Act, he is a worker who reasonably believes he has been bullied at work, and is thereby able to make the 2017 application.

[2] Mr Ryan is a Life Member of RSL Queensland and is President of the Returned & Services League of Australia (Queensland Branch) Lowood Sub-Branch Inc. (the Lowood Sub-Branch) an incorporated association. Mr Ryan is also a volunteer for a Pension Advocacy and Welfare Service (PAWS) which provides services for veterans dealing with their entitlements under legislation including the *Veterans Entitlements Act*, the *Safety Rehabilitation and Compensation Act*, and the *Military Rehabilitation and Compensation Act*. The 2017 application relates to the PAWS work performed by Mr Ryan.

[3] The alleged bullying behaviour as set out in the 2017 application includes Mr Ryan being required to show cause as to why he should not be expelled from RSL Queensland. This is the second application for an order to stop bullying made by Mr Ryan and follows an earlier application made on 23 August 2016 (the 2016 application) which involved a show cause process initiated against Mr Ryan. At that time, Mr Ryan was also a Director of RSL Queensland and the President of the Returned & Services League of Australia (Queensland

Branch) Moreton District Branch Inc. (Moreton District Branch). Mr Ryan no longer holds those positions.

[4] The 2016 application was resolved following conciliation conferences conducted by me and a statement was issued setting out the resolution. In the 2017 application Mr Ryan asserts that the same conduct is continuing and that RSL Queensland is again requiring him to show cause as to why he should not be expelled from membership, for reasons including that his application under s. 789FC of the FW Act is conduct prejudicial to RSL Queensland. Mr Ryan has also sought to amend the 2017 application to include a number of allegations set out in the 2016 application. It is not necessary at this time to deal with the amendment sought by Mr Ryan to the 2017 application.

[5] The provisions of the FW Act dealing with Workers Bullied at work are found in Part 6-4B. For a valid application for an order to stop bullying to be made, certain requirements must be met. The applicant must be a “*worker*” as defined and must reasonably believe that he or she is being bullied “*at work*”. For the purposes of the provisions, a “*worker*” is defined by reference to the *Work Health and Safety Act 2011* (the WHS Act) which includes a requirement that the worker is performing work for a “*person conducting a business or undertaking*” which is defined to exclude a wholly volunteer organisation with no employees. It is also necessary that the behaviour alleged to be bullying has occurred while the “*worker*” is “*at work*” in a “*constitutionally covered business*”, which for present purposes is a trading corporation as defined in paragraph 51(xx) of the Constitution.

[6] It is not in dispute that in respect of its employees and volunteers, RSL Queensland is “*a person conducting a business or undertaking*” and a “*constitutionally covered business*”. However RSL Queensland objects to Mr Ryan’s application asserting that PAWS is conducted by the Lowood Sub-Branch and it is that entity to which Mr Ryan provides his volunteer services. RSL Queensland contends that the Lowood-Sub branch is not “*a person conducting a business or undertaking*” as defined in the WHS Act on the basis that it has no employees and is not a “*a constitutionally covered business*” on the basis that it is not a trading corporation. Further, RSL Queensland contends that as the Lowood Sub-Branch conducts the workplace in which Mr Ryan undertakes his volunteer work, the workplace is not conducted by a constitutionally covered business. Accordingly, Mr Ryan’s application is not validly made on the basis that he is not a “*worker*” and nor is Mr Ryan “*at work*”.

[7] Mr Ryan concedes that the Lowood Sub-Branch may not meet the legislative definitions of “*a person conducting a business or undertaking*” or a “*constitutionally covered business*”. However, Mr Ryan contends that he is a volunteer for RSL Queensland and it is that entity which conducts the PAWS. In the alternative, Mr Ryan asserts that RSL Queensland exercises such control over the conduct of the PAWS for which his volunteer work is performed that RSL Queensland is conducting that undertaking.

[8] A hearing was conducted in relation to the jurisdictional objection. Permission was granted for RSL Queensland to be legally represented on the basis that I was satisfied that the matter raised complex legal issues which would be dealt with more efficiently with the assistance of a legal representative. I also had regard to an undertaking given by the legal representative seeking permission, that RSL Queensland would not seek costs against Mr Ryan in the event that its jurisdictional objection was upheld. In my view this undertaking is relevant to fairness, on the basis that Mr Ryan will not be exposed to costs if his application is dismissed for want of jurisdiction.

[9] Mr Ryan gave evidence on his own behalf. Evidence in support of the jurisdictional objection was given by Mr Luke Traini, the Chief Executive Officer of RSL Queensland. Both Mr Ryan and Mr Traini tendered a significant number of documents. All of the evidence and submissions have been considered.

## 2. Legislation

[10] The legislative provisions dealing with applications for orders to stop bullying are contained in Part 6-4B of the FW Act. Section 789FC provides as follows:

### “789FC Application for an FWC order to stop bullying

- (1) A worker who reasonably believes that he or she has been bullied at work may apply to the FWC for an order under section 789FF.
- (2) For the purposes of this Part, *worker* has the same meaning as in the *Work Health and Safety Act 2011*, but does not include a member of the Defence Force.

Note: Broadly, for the purposes of the *Work Health and Safety Act 2011*, a worker is an individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience or a volunteer.

- (3) The application must be accompanied by any fee prescribed by the regulations.
- (4) The regulations may prescribe:
  - (a) a fee for making an application to the FWC under this section; and
  - (b) a method for indexing the fee; and
  - (c) the circumstances in which all or part of the fee may be waived or refunded.”

The term “*worker*” is defined in s. 789FC of the FW Act as having the same meaning as in the *Work Health and Safety Act 2011 (WHS Act)*. In general terms, the *WHS Act* at s. 7 provides that a worker is a person who carries out work in any capacity for a person conducting a business or undertaking, including a volunteer.<sup>1</sup> Section 5 of the *WHS Act* defines the term “*a person conducting a business or undertaking*” as follows:

“(1) For this Act, a person conducts a business or undertaking –

- (a) whether the person conducts the business or undertaking alone or with others; and
- (b) whether or not the business or undertaking is conducted for profit or gain.

(2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.

(3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.

(4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.

(5) An elected member of a local government does not in that capacity conduct a business or undertaking.

(6) A regulation may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.

(7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.

(8) In this section, **volunteer association** means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.”

[11] Section 789FD of the FW Act defines when a worker is bullied at work as follows:

“789FD When is a worker *bullied at work*?

(1) A worker is *bullied at work* if:

(a) while the worker is at work in a constitutionally-covered business:

(i) an individual; or

(ii) a group of individuals; repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and

(b) that behaviour creates a risk to health and safety.

(2) To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a reasonable manner.

(3) If a person conducts a business or undertaking (within the meaning of the *Work Health and Safety Act 2011*) and either:

(a) the person is:

(i) a constitutional corporation; or

(ii) the Commonwealth; or

(iii) a Commonwealth authority; or

(iv) a body corporate incorporated in a Territory; or

(b) the business or undertaking is conducted principally in a Territory or Commonwealth place; then the business or undertaking is a *constitutionally-covered business*.”

[12] The term “*constitutional corporation*” is defined in s. 12 of the FW Act in the following terms:

“*constitutional corporation* means a corporation to which paragraph 51(xx) of the Constitution applies.”

[13] Paragraph 51(xx) of the Constitution defines constitutional corporations as: “*Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth*”.

### **3. Evidence and submissions**

#### **3.1 Relevant entities**

[14] The RSL in Australia consists of a number of relevant entities. I will refer to them as follows:

- The Returned & Services League of Australia Limited – (National body/ the League);
- The Returned & Services League of Australia (Queensland Branch) – (RSL Queensland);
- Returned & Services League of Australia (Queensland Branch) Moreton District Branch Inc. (Moreton District Branch); and
- Returned & Services League of Australia (Queensland Branch) Lowood Sub-Branch Inc. – (Lowood Sub-Branch.)

[15] Each of those entities has a Constitution, rules and by-laws. There is regulated interaction between the entities as prescribed by their Constitutions. The Constitutions of the entities were tendered by the parties and referred to in their submissions.

[16] The Constitution of the League states at article 4.1 Objects, as follows:

“The RSL is established for the principal purpose of promoting the interests and welfare of serving and ex-serving men and women of the Australian Defence Force and their dependants and for this purpose has the following objects:

(a) To assist and care for the sick, elderly and needy by providing, or assisting to provide pensions, benefits, accommodation, medical treatment, rehabilitation and other forms of welfare;...

(i)To encourage members of the League and citizens to serve the Nation with a spirit of self-sacrifice and loyalty with which they served as members of the Australian Defence Forces...”

[17] By virtue of article 9.2 of the League’s Constitution, the State Branches – of which RSL Queensland is one by virtue of article 17.1(c) – are members of the League. Article 17.2 of the Constitution of the League provides that a State Branch comprises Sub-Branches and individual members of Sub-Branches. Article 17.3 requires that State Branches adopt a Constitution or Rules and governance structure consistent with the League’s Constitution.

**[18]** The Objects of RSL Queensland as set out in Article 2 include:

“2.2.1 provide for the sick, helpless, wounded, aged, vulnerable, destitute and needy among those who are serving or who have served in the Australian Defence Forces and their dependants...

2.1.7 encourage Members, as citizens, to serve Australia with that spirit of self-sacrifice and loyalty with which they served as members of the Australian Defence Forces; ...”

**[19]** By virtue of clause 4.4 of the Constitution, RSL Queensland is not responsible for any liabilities of District Branches unless such liability is expressly taken over by resolution of the RSL Queensland AGM or Board. Members of RSL Queensland are required to be recorded as members on a Sub-Branch register of members, the Unattached List of members or the Miscellaneous List of members (article 3.4). All members of RSL Queensland are required to comply with its Constitution and the Constitution of the National Body and the relevant Sub-Branch (articles 3.10.3, 3.10.4 and 3.10.5). RSL Queensland is also required to keep a Register of members and the Lists of Unattached and Miscellaneous members. RSL Queensland has the power to warn, reprimand, suspend or remove members. By virtue of article 5.10 of the RSL Queensland Constitution relevant Disciplinary provisions are those set out in the National Constitution, RSL Queensland Constitution and any applicable District or Sub-Branch rules or by-laws.

**[20]** The Board of RSL Queensland is empowered to:

- Direct and control all District Branches and Sub-Branches on questions of public policy (article 11.3.9);
- Inspect books, papers, correspondence and any other documents of District and Sub-Branches (article 11.3.10);
- Investigate any matter associated with RSL Queensland including appointing an investigating officer either at the request of the Board, any District or Sub-Branch or the RSL Queensland Branch Tribunal to make inquiries that are in relation to or in the interests of the League in relation to any
  - District Branch;
  - Sub-Branch;
  - Member of the League;
  - Fundraising or business activity carried on by or in the name of the League; or
  - Services provided by or in the name of the League (article 11.3.11); and
- Discipline a Member, Sub-Branch or District Branch in relation to any matter associated with RSL Queensland Branch (article 11.3.13).

**[21]** Article 14 of the RSL Queensland Constitution provides that the Board may establish, amalgamate or abolish District Branches and Sub-Branches. Further District Branches and Sub-Branches are required to be established and conducted in accordance with RSL Queensland by-laws and other relevant policies and directives. District and Sub-Branches are also required to:

- Operate under the leadership of a President and in accordance with policies and directives of the RSL Queensland Board and terms from time to time determined by it;

- Ensure its members comply with and are bound by the National Constitution and By-Laws and State Branch by-laws, rules policies and directives made by the Board;
- Report to the RSL Queensland Board regularly as required and at the AGM;

[22] Article 14.7 of the RSL Queensland Constitution provides that a Sub-Branch or District Branch may incorporate only with express written consent of the Board and must seek approval to do so. A Sub-Branch or District Branch must also seek approval from RSL Queensland for rules and by-laws to the extent that they differ from those published from time to time by RSL Queensland. A Sub-Branch or District may not change its rules or by-laws without express written consent of RSL Queensland.

[23] The Objects of the Moreton District as set out in Article 3 of its Constitution include:

“(a) provide for the sick, helpless, wounded, aged, vulnerable, destitute and needy among those who are serving or who have served In the Australian Defence Forces and their dependants; ...

(g) encourage Service and Life Members, as citizens, to serve Australia with that spirit of selfsacrifice and loyalty with which they served as members of the Australian Defence Forces; and

(h) provide welfare to the sick, helpless, wounded, vulnerable, aged, destitute and needy.”

[24] Clause 4 of the Moreton District Constitution provides that State Branch (RSL Queensland) has jurisdiction over all District Branches within its state or Territory. The Moreton District Branch is required to comply with the Rules and By-Laws of the League and RSL Queensland. There are also requirements in relation to co-operation in any inspection of documents; investigations including into the provision of services provided by or in the name of the League; and in relation to any mediation officer appointed by RSL Queensland.

[25] The powers of the Moreton District Branch as set out in clause 5 of the Constitution are:

“5.1 Subject to rules 4 and 5.2, the Association has the powers of an individual and may, for example:

- (a) enter into contracts;
- (b) acquire, hold, deal with and dispose of property;
- (c) make charges for services and facilities it supplies; and
- (d) do other things necessary or convenient to be done in carrying out its affairs.

5.2 The Association may only exercise the following powers with the prior written consent of State Branch:

- (a) purchase, sell, lease, mortgage, charge, exchange or otherwise acquire, dispose of or encumber any real property;
- (b) borrow or raise money in particular by mortgage or other securities upon all or any property of the Association, present or future;
- (c) issue debentures or other securities, whether outright or as security for any debt, liability or obligation of the Association; or

- (d) amend or repeal this Constitution.

**[26]** Sub-Branches within the geographical bounds of the Moreton District Branch are automatically its members and have rights under its Constitution.<sup>2</sup> By virtue of clause 11 of the Moreton District Branch Constitution, membership ceases if the member ceases to be a Sub-Branch or is no longer recognised as such by RSL Queensland or has its charter removed by RSL Queensland.<sup>3</sup>

**[27]** The objects of the Lowood Sub-Branch as set out in clause 3 of its constitution include:

“3.1 The Sub Branch is established for the principal purpose of promoting the interests and welfare of former and serving members of the Australian Defence Force and their Dependants and for this purpose has the following objects:

(a) to assist and care for the sick, elderly and needy by providing or assisting in the provision of pensions, benefits, accommodation, medical treatment, rehabilitation and other forms of welfare;

(b) to establish and accept trusts having for their object the welfare and benefit of any member of the League, its Branches, or Sub Branches, or of any member, or ex-member, of the Australian Defence Force, or their dependants;

(c) in furtherance of any of the objects of the League, to make grants to and give assistance to such persons, trusts, groups, associations, societies, institutions or other organisations and authorities and to establish such scholarships as the Sub-Branch may, from time to time, determine;”

**[28]** The League is defined in the Lowood Sub-Branch constitution as the League. The Constitution of the Lowood Sub-Branch provides in article 3 that in carrying out its objects, the Lowood Sub-Branch may undertake a broad range of activities including: dealing with real and personal property and money. However, generally such activities are required to be for purposes of furthering the objects of the League. The Constitution also provides that where the Lowood Sub-Branch raises money by mortgage or other security upon or any of its property it must notify RSL Queensland. Further, the Lowood Sub-Branch Constitution provides for payment of expenses incidental to the formation, management and carrying out its objects and the payment of salaries to persons employed by it.<sup>4</sup>

**[29]** The powers of the Lowood Sub-Branch to undertake such activities as entering into contracts; acquiring, holding and dealing with property; charging for services and facilities it supplies; borrowing or raising money, must be exercised as provided by the rules and by-laws of RSL Queensland.<sup>5</sup> The Lowood Sub-Branch is empowered to admit and reject members but RSL Queensland can veto membership on proof of ineligibility.<sup>6</sup>

### 3.2 RSL Queensland

**[30]** The submissions for RSL Queensland and the evidence given on its behalf by Mr Traini, can be summarised as follows. Each of the RSL Queensland, Moreton District and Lowood Sub-Branch is separately incorporated. In Queensland there are currently 10 Districts and 241 Sub-branches. According to Mr Traini, RSL Queensland has limited

jurisdiction over each of these entities. Individual members constitute the membership of both RSL Queensland and the Sub-Branches. Sub-Branches constitute membership of Districts. Lowood Sub-Branch is a member of the Moreton District.

**[31]** Sub-Branches consist of:

- Individual members who qualify for membership as having served with, supported or otherwise been engaged with the Australian Defence Force for a period of at least 6 months;
- Associate members from other Sub-Branches; and
- Non League (non-voting members).

**[32]** Mr Traini said that Sub-Branches are concerned with the welfare and wellbeing of veterans and their dependents and conduct activities including the provision of fellowship and mutual support and assistance with pension entitlements and related matters. Sub-Branches also carry out commemorative activities in the community and schools. According to Mr Traini, these entities should not be confused with higher profile RSL Clubs which typically provide large licenced entertainment and food facilities. The Moreton District and Lowood Sub-Branch entities are organisations which, consistent with their objects, focus on member needs and commemorative functions.

**[33]** In relation to PAWS and advocacy, Mr Traini said that these are provided by both Districts and Sub-Branches. These activities may be assisted with funding made by the Department of Veterans Affairs to Districts and Sub-Branches who supply assistance to veterans through volunteers. Sub-Branches and Districts apply directly to the Department of Veterans Affairs, other Government Departments and private businesses, for grants to assist in their operations. Mr Traini's understanding is that Mr Ryan is a volunteer in two capacities:

- Providing advocacy services for the Lowood Sub-Branch; and
- Performing the role of chair of a sub-committee of the fiduciary board of the Moreton District otherwise known as the Moreton District PAWS Group.

**[34]** Mr Traini states that while Mr Ryan formerly performed a volunteer role with RSL Queensland in the capacity of Director, following his resignation from that role on 2 November 2016, Mr Ryan no longer works as a volunteer of RSL Queensland. Mr Traini tendered documents filed with the Australian Charities and Not-for-profits Commission (ACNC) relevant to the Lowood Sub-Branch between 2009 and 2014 and based on those documents states that the activities of the Lowood Sub-Branch consist of providing welfare and social opportunities for members predominantly consisting of:

- Social events involving provision of meals for members and their families;
- Raffles to raise money for activities of the Sub-Branch; and
- Provision of welfare services.

**[35]** Based on ACNC documents relevant to the Moreton District for 2014 and 2015, Mr Traini said that the Moreton District provides greater focus on providing ceremonial events; provision of cadet and Light Horse activities; raffles and merchandise to raise money for activities of the District; and provision of welfare services. The constitution of the Moreton District Branch tendered by Mr Traini relevantly states that in furtherance of its objects: the

Moreton District Branch may be part of a national association known as the League (defined as the Returned & Services League of Australia Limited); (clauses 3 and 1); undertake charitable work; accept gifts or bequests; establish trusts; make grants; receive and distribute funds; maintain premises; apply for necessary licenses or permits to carry out activities; and do all incidental things to attain its objects.<sup>7</sup>

**[36]** In a further Affidavit, Mr Traini tendered a range of material including Policy and Procedures in relation to PAWS obligations. These refer to RSL Practitioners and provide that RSL Districts and Sub-Bran­ches are required to be aware of their obligation and responsibilities when authorising RSL Pension, Welfare Officers and Advocates to operate within their area of responsibility. The qualification of RSL Practitioners is governed by practitioners attending training at TIP Courses. The mandatory requirements under the Policy for a person authorised to act as an RSL Practitioner are:

- “1. Authorised by an RSL District or Sub Branch to act as a practitioner.
  2. Authorisation must be in writing and stipulate the level the practitioner is authorised to practice on behalf of the RSL.
  3. Authorisation must be ratified (by way of a motion) at the District or Sub Branch AGM and recorded in the minutes, which must be forwarded to RSL (Queensland Branch) and the District Branch within sixty days of the completion of the Annual General Meeting.
  4. Authorisation can be withdrawn if the RSL District or Sub Branch is of the belief that the RSL Practitioner is:
    - a. not acting in the best interest of the client;
    - b. not acting in accordance with the RSL and TIP Code of Ethics;
    - c. either unable or unwilling to undertake TIP training or refresher courses; and
    - d. not maintaining an auditable case files.
- RSL practitioners are not to charge a fee for service or solicit donations in respect of pension and welfare services.”

**[37]** The Policy further indicates that RSL Queensland provides training for RSL Practitioners. The District or Sub-Branch funds attendance at the training and then reimbursement for this expenditure can be claimed from RSL Queensland. The names and addresses of RSL Practitioners are required to be notified by Districts and Sub-Bran­ches to RSL Queensland. RSL Queensland facilitates the provision of indemnity insurance for Practitioners. Districts and Sub-Bran­ches are required to maintain an auditable trail of case work. Case files created by RSL Practitioners are in the care of RSL Districts or Sub-Bran­ches but remain the property of the RSL. The Policy further states that Districts or Sub-Bran­ches employ RSL Practitioners and are therefore responsible for ensuring that there is an auditable trail of case work.

**[38]** The example letter of authorisation for PAWS Officers authorises them as Welfare Officer/Pensions Officer/Advocate with a particular Sub-Branch and also states that such Officers agree to abide by the RSL and TIP Code of Ethics as adopted by the Sub-Branch. Further the letter states that authorisation is reviewed annually and can be withdrawn any time by the Sub-Branch without explanation. The information in relation to Public Liability Insurance appended to Mr Traini’s second Affidavit states that all Sub-Bran­ches within the District are covered by public liability insurance which covers them for accidental bodily injury or property damage to clients and members of the public at their premises or any place

they work. It is also stated that: “*Depending on the circumstances of the injury action may be brought against the sub branch and or the RSL or both*”.

[39] Mr Traini also tendered documentation indicating that RSL Queensland has established a District and Sub Branch Welfare Fund to assist Districts and Sub-Branches to establish PAWS services and in the payment of out of pocket expenses to those who undertake such services. The documentation indicates that the grants are not intended to replace existing sources of support such as the RSL Queensland District and Sub-Branch Welfare Fund or other grants available from Commonwealth, State or Local Government.

[40] Further, Mr Traini tendered a range of documents indicating that the Lowood Sub-Branch applied for a range of funding, entered into co-operative arrangements with other Sub-Branches in relation to PAWS activities and opened purpose built premises in 2016 to undertake PAWS activities using funding it obtained. The relevant applications for funding were signed by Mr Ryan. The documents tendered by Mr Traini included a Memorandum of Understanding (MOU) entered into between the Lowood Sub-Branch as sponsor and a number of other Sub-Branches for joint applications for funding under the Building Excellence in Support and Training Program (BEST) and Service Delivery Grant. The MOU provides for the establishment of a management committee and has objectives involving improvement of veterans’ claims processes and to promote the provision of welfare services and assist access to welfare services and benefits for recipients of services.

[41] A 2016 Secretary’s Report for the Moreton District Branch tendered by Mr Traini refers to logbooks used to record volunteer hours evidencing “*Sub-Branch dedication to the objects of the League*”. The Report also refers to 70,000 + hours of volunteer work in the District supporting the objects of the League. Under the heading “*District PAWS*” the Report states that a District PAWS Officer provided co-ordinated mentoring for volunteers and organised training information sessions for PAWS practitioners within the District in accordance with RSL Queensland PAWS policy. The documentation tendered by Mr Traini also indicates that there was a BEST Grant funded Pension Officer employed in the Moreton District in 2016. The documentation tendered by Mr Traini further indicates that PAWS volunteers assisted with the deployment of an RSL Caravan that was transported to local Country Shows to assist in claims and recruiting within the area.<sup>8</sup>

[42] Under cross-examination, Mr Traini agreed that RSL Queensland can remove membership of a Sub-Branch through a tribunal established under its Constitution. Further, Mr Traini agreed that RSL Queensland has the power under its constitution to wind up a District or Sub-Branch and to give permission to a Sub-Branch to incorporate. Mr Traini is aware that RSL Queensland has previously wound up four Districts. Mr Traini maintained that this constitutes limited control over Sub-Branches by RSL Queensland and is part of a governance function.

[43] Mr Traini agreed that members of RSL Queensland are recorded in a Sub-Branch register of members, the unattached list of members or the miscellaneous list of members. Each Sub-Branch can nominate a single representative at an AGM with each Sub-Branch receiving one vote. Mr Traini was questioned about how he obtained documents appended to his second Affidavit, in circumstances where he maintained that RSL Queensland did not have overarching control over Sub-Branches and Districts. Mr Traini said that this may be because RSL Queensland provides IT storage infrastructure and administrative staff to assist

Sub-Branches and Districts to enable them to do their work more easily through economies of scale.<sup>9</sup>

[44] Mr Traini was shown a statement contained on the RSL Queensland website set out in Mr Ryan's submission as follows:

“RSL has a large number of paid staff and volunteer members across the State who are highly trained...Many of our paid staff and all of our volunteer members are former servicemen and women who not only understand the unique circumstances of military life but can apply their knowledge from previous claims to ensure you get the compensation and benefits to which you are entitled.”<sup>10</sup>

[45] Mr Ryan also referred Mr Traini to statements set out in a 2012 Submission made by RSL Queensland to a Review of not-for-profit governance arrangements conducted by the Australian Government at that time and in particular a comment made at paragraph 2.9 of that Submission as follows:

“Without these volunteers many commercially unviable and unsustainable services (if charged at full or even a fraction of the value) would not be able to be undertaken in the same quantity, quality or at all. RSL (Queensland Branch) estimates that its members contribute in excess of 1 million hours of volunteer time carrying out the charitable, including patriotic objects. It is our estimate, that on average, RSL (Queensland Branch) through its District and Sub-Branches helps one Queenslanders every 3-4 minutes.”<sup>11</sup>

[46] Mr Traini rejected the proposition that these statements indicate that the volunteers referred to are working for RSL Queensland. In response to a question about how the statistics in relation to volunteers are obtained, Mr Traini said that RSL Queensland does not have access to “*the granular time-sheeting of the Sub-Branch volunteers*” and took an estimate of what that might be across the State because RSL Queensland's website is viewed by the public at large. This was done in a marketing sense to articulate to the public the combined volunteerism and effect of volunteers in the State of Queensland for RSL Queensland.<sup>12</sup> In response to the proposition that the statement was an advertisement for RSL Queensland and made it clear that the volunteers were working for RSL Queensland, Mr Traini said:

*“The public at large don't have a good understanding of the 255-odd entities that make up RSL – the broad concept of the League. So in order for us to make meaningful statements in a marketing sense to the public, we undertook an estimate of the aggregate of good work in the community that is done by the league in the State of Queensland in order to create the marketing materials that you've got here.”*<sup>13</sup>

[47] Mr Traini also maintained that volunteers in sub-branches who work in their local community centres provide on-the-ground welfare and advocacy generally seen by the public. Mr Traini further maintained that RSL Queensland does not engage individual volunteers who volunteer at Sub-Branch Level. RSL Queensland does not have access to their time sheets and does not control or direct them or manage their risks. In relation to statements about the umbrella role played by RSL Queensland outlined in its 2012 submission, Mr Traini contended that this does not involve control over Sub-Branches. Mr Traini also rejected the proposition that RSL Queensland is a person conducting a business or undertaking on behalf

of the Sub-Branches and Districts for the purposes of Workplace Health and Safety legislation.

[48] Mr Traini agreed that RSL Queensland provided training to Mr Ryan to be a Level 4 Advocate and paid for that training. Mr Traini also agreed that insurance is provided for all RSL Practitioners in Australia under an umbrella policy held by the League. In response to the proposition that RSL Queensland provided a shirt worn by Mr Ryan both at the hearing and presumably while conducting his PAWS activities, Mr Traini said that a promotional pack containing items such as a bag, shirt, pens and pads were provided to trainees by RSL Queensland.

[49] Mr Traini was shown a PAWS policy approved by RSL Queensland in 2014. In response to the proposition that it provides for a database and that RSL Queensland is the controller of the data base and therefore the insurance policy and the volunteers, Mr Traini said that volunteers are authorised by Sub-Branches and the Policy provides that they must be advised to RSL Queensland to ensure that the data base is up to date. This in turn ensures that the volunteers are insured.

[50] Mr Traini said that RSL Queensland does not endorse volunteers but rather enters their details into the data base when advised of their appointment by Sub-Branches. According to Mr Traini the license to operate or the control is exercised by Sub-Branches and RSL Queensland provides the infrastructure to centrally manage the data base so that the insurance coverage is effective. Mr Traini agreed that if volunteers do not undertake and maintain relevant training, RSL Queensland removes them from its data base. This is to ensure that practitioners are insured and practitioners who are not on the data base are uninsured. RSL Queensland also provides an umbrella accident insurance coverage for volunteers.

[51] RSL Queensland submitted that it has specific governance powers in relation to Districts and Sub-Branches and that the functions referred to by Mr Ryan in his submissions are associated with governance. In particular, RSL Queensland:

- Has no power to direct the day to day operations of Sub-Branches;
- Does not perform the PAWS work performed by Sub-Branches;
- Provides governance, oversight and support functions to Sub-Branches performing PAWS and other welfare work;
- Has powers limited to those provided in its Constitution to:
  - Approve incorporation of the Sub-Branch entity;
  - Close down districts which were composed incorrectly under their constitutions;
  - Call for and receive financial statements to confirm compliance; and
  - Generally ensure that the governance of the League as it applies to Sub-Branches generally is conducted correctly.

[52] RSL Queensland submits that beyond these functions, it has no operational control over Branches or Sub-Branches. In relation to the powers of the Board of RSL Queensland, it is submitted that those powers as they relate to Sub-Branches, are confined to enabling compliance with proper governance standards across the League in Queensland. RSL Queensland also points to the powers of the Lowood Sub-Branch and in particular its object to assist and care for the sick, elderly and needy by providing or assisting in the provision of

pensions, benefits, accommodation, medical treatment, rehabilitation and other forms of welfare. RSL Queensland submits that in discharge of its objects and in accordance with the powers prescribed in its Constitution, the Lowood Sub-Branch provides services identified in its annual financial statements and meeting reports.

### 3.3 Mr Ryan

[53] Both Mr Ryan's submission and an affidavit setting out his evidence to the Commission were tendered into evidence. In his affidavit Mr Ryan states that he is a life member and volunteer for RSL Queensland and is currently a Level 4 Veterans' Advocate performing pension, advocacy and welfare duties for RSL Queensland. RSL Queensland organised and paid for Mr Ryan's training and provides civil liability professional indemnity insurance for paid and volunteer advocates. Mr Ryan tendered a policy for such insurance which lists the Returned Services League of Australia in the schedule of insured entities.<sup>14</sup> RSL Queensland also holds a Personal Accident and Sickness Insurance Policy which is stated to cover "*All volunteers...of the policy holder.*"<sup>15</sup>

[54] Mr Ryan states that RSL staff and volunteers work in a collaborative manner across the State of Queensland to provide advocacy services to the veteran community. In this regard Mr Ryan pointed to RSL Queensland's Website which sets out the following statements in relation to Help with DVA Claims<sup>16</sup>:

#### **"Help with DVA Claims**

The RSL operates with a simple goal – Its vision is to ensure that all current and former service personnel and their families who are in need of assistance get the support they need.

The RSL has a very long history of assisting those who have suffered injury or a medical condition as a result of their service, including advocating on behalf of the service person to ensure they are fairly compensated for the impact the condition has on their ongoing quality of life.

We understand the complexities around the three main Acts of Parliament which apply to veteran entitlements, how they relate to your individual circumstances, and the processes involved in securing income support payments, compensation payments, health cards (white and gold cards) and other measures to support rehabilitation.

#### **Preparing your claim**

We encourage anyone who has sustained illness or injury as a result of their service to document their claims as early as possible and to do this with the assistance of an experienced specialist. RSL has a large number of paid staff and volunteer members across the State who are highly trained and know the ins-and-outs of the DVA claims process and how to gather the details required to lodge successful claims. Many of our paid staff and all of our volunteer members are former servicemen and women, who not only understand the unique circumstances of military life, but can apply their knowledge from previous claims to ensure you get the compensation and benefits to which you are entitled. Of equal importance is our network of welfare staff and

volunteers, who can provide you invaluable emotional support both during and after the claims process.

### **Advocacy for unsuccessful DVA claims**

If your DVA claim has been unsuccessful, you may be able to appeal to the Veterans' Review Board (VRB). RSL Advocates will provide advice and assistance with the appeals process. They will research your entitlements, review your claim paperwork to determine if there are any errors or omissions, assist in gathering additional evidence, and help with VRB hearings."

[55] Mr Ryan also states that on an annual basis, RSL Queensland volunteer agency statistics are collated together with RSL Queensland paid advocacy statistics and presented as combined overall figures for promotion and publicity purposes. In support of this statement Mr Ryan appended a social media post made by RSL Queensland stating that 9,000 interviews were conducted by veteran services officers and volunteers in 2016.<sup>17</sup>

[56] In support of the proposition that RSL Queensland provides welfare and social support services to veterans and their dependents through PAWS advocacy services Mr Ryan pointed to the following matters:

- Mr Ryan's initial training as a level 4 advocate was approved and paid for by RSL Queensland;
- Mr Ryan is required as a voluntary advocate to continue training provided by the RSL Queensland;
- RSL's National body provides civil liability professional indemnity insurance for paid and volunteer advocates;
- RSL Queensland provides personal accident and sickness insurance for all volunteers; and
- RSL badged vehicles registered in the name of RSL Queensland are provided for the purpose of assisting volunteers to provide advocacy services to the veteran community.

[57] Mr Ryan also pointed to the fact that in the course of his 2016 application, a request was made by RSL Queensland that he provide a medical certificate stating that he was fit to continue to fulfil his voluntary role with RSL Queensland. In relation to where the PAWS work is carried out, Mr Ryan said that he undertakes representation in Veterans' Review Boards including in Brisbane, Darwin and Melbourne. In such cases, veterans are referred to Mr Ryan by other Ex-Service Organisations. On occasion, paid pension practitioners in other Sub-Branched refer particular cases to Mr Ryan on the basis of his expertise. Mr Ryan conducts work by skype or video link using equipment that is provided by RSL Queensland, although that equipment has been removed due to ongoing disputation between Mr Ryan and RSL Queensland. Under cross-examination Mr Ryan agreed that some of this work was *ad hoc*, but maintained that he performed the work for RSL Queensland.

[58] Mr Ryan said in relation to the structure of the RSL that it is a national charitable organisation. Under RSL National's constituent documents it has established State Branches in each State and Territory of Australia, of which RSL Queensland is one. RSL Queensland complies with the RSL National Constitution and By-Laws. Charitable objects of the organisation are set out at a National level and form the basis of the charitable objects listed

with the RSL Queensland Branch constitution. The objects for which RSL Queensland Branch is established are mandated through each District and Sub-Branch constitution within Queensland.

**[59]** In relation to membership, Mr Ryan said that the Constitution of RSL Queensland confirms that membership comprises individual members (service members and life members) and does not stipulate that Sub-Branches and District Branches are members. The Constitution further confirms that each individual member of RSL Queensland is affiliated with a particular Sub-Branch for voting purposes.<sup>18</sup> As submitted by RSL Queensland to a 2012 Review of the not-for-profit sector conducted by the Australian Government:

“RSL (Queensland Branch) has a large and engaged membership – it is a highly participatory not-for-profit. The 40,000 members of RSL (Queensland Branch), which come from its 248 Sub-Branches, provide a significant amount of volunteer services to RSL (Queensland Branch) through the District and Sub-Branches.”<sup>19</sup>

**[60]** Mr Ryan asserted that as a past Director of RSL Queensland, a past Director of a District Branch and the current President of a Sub-Branch he has knowledge that RSL Queensland is an umbrella organisation and has overarching control of district branches and sub-branches established through Queensland. In support of this proposition Mr Ryan referred to the submission of RSL Queensland to the 2012 Review of the not-for-profit sector in which RSL Queensland stated:

“In order to ensure local responses to local needs, local ex-service men and women in the community can establish a Sub-Branch to deliver services consistent with the RSL’s objectives to current and ex-service men and women in their local communities. RSL (Queensland Branch) umbrellas this whole structure providing support and monitoring throughout.”<sup>20</sup>

**[61]** Mr Ryan tendered correspondence from the CEO of RSL Queensland dated February 2012, addressed to all District Presidents, District Secretaries, Sub-Branch Presidents and Secretaries. The correspondence is headed “OHS LEGISLATIVE CHANGES RE: VOLUNTEERS” and states that RSL Queensland is a person conducting a business or undertaking for the purposes of the *Workplace Health and Safety Act 2011 (Qld)* and has a duty of care to ensure, so far as is reasonably practicable, the health and safety of all persons including its employees and volunteers. The correspondence goes on to state that employees and volunteers of the RSL have duties under the Act to co-operate with any reasonable policy or procedure of the RSL relating to health or safety at the workplace that has been notified to that person.<sup>21</sup>

**[62]** Mr Ryan also tendered a document entitled: “*Returned and Services League of Australia (Queensland Branch) Queensland Veterans Services Advisory Committee (QVSAC) Terms of Reference*” approved by the Board of RSL Queensland on 11 December 2014. The terms of reference indicate that the objective of the QVSAC is to ensure that the Veteran community has avenues to obtain the optimum benefits to which they are entitled under relevant legislation. The Mission Statement of the QVSAC also includes making recommendations to the Board of RSL Queensland on how best RSL resources can be deployed to maximise benefits to the wider veteran community.

[63] The authority of the QVSAC is received from the Board of RSL Queensland via the RSL Queensland constitution. The tasks of the QVSAC include developing and overseeing the implementation of policy. Also approved by the Board of RSL Queensland on 11 December 2014 was a document entitled “PAWS Policy”. The PAWS Policy states that RSL Districts and Sub-Branches are to be aware of their obligation and responsibilities when authorising RSL Practitioners (Welfare Officers, Pension Officers and Advocates) to operate within their area of responsibility. The PAWS Policy defines an RSL Practitioner as follows:

#### “RSL PRACTITIONERS

An RSL Practitioner is a person who provides information and assistance to the veteran community who are entitled to benefits under the Veterans’ Entitlement Act 1986 (VEA), Military Rehabilitation and Compensation Act 2004 (MRCA), Safety, Rehabilitation and Compensation Act 1988 (SRCA) or other Repatriation legislation. An Advocate can assist in the preparation of applications for review from adverse decisions and appear as a representative or Advocate for an application before the Veterans’ Review Board or Administrative Appeals Tribunal, dependent on the level of authorisation.”

[64] The PAWS Policy goes on to set out mandatory requirements for persons authorised to act as an RSL Practitioner including that the Practitioner be authorised in writing by an RSL District or Sub-Branch to act as a Practitioner on their behalf and confirmed by a motion at a District or Sub-Branch meeting, recorded in the minutes. The PAWS Policy further provides that authorisation can be withdrawn by the authorising District or Sub-Branch on certain grounds. The Policy provides for training and refresher training provided by RSL Queensland. The PAWS Policy states:

#### “REGISTRATION OF RSL PRACTITIONERS

RSL Districts and Sub Branches are to notify the District Secretary the name, addresses and level of authorisation of their Practitioners. This is to occur through the provision of copies of letter of authorisation and certificate of attendance at RSL (Qld) refresher training. The District Secretaries then update RSL (Queensland Branch) records through the Practitioner Database. This information is to be kept up to date on the Practitioner Database regardless of the number or frequency of changes. This is an important aspect of the VITA indemnity insurance as the policy itself does not list the individuals covered.

#### AUDITABLE TRAIL OF CASE WORK

All RSL Practitioners are required to maintain an auditable trail of case work. If a claim against an RSL practitioner is made the insurer will want to see all documentation the practitioner has prepared. Therefore, it is vitally important that each RSL Practitioner maintains auditable files for each case and continues to maintain their currency as the case progresses.

#### CASE FILES

The case files created by RSL practitioners in the care of the RSL District or Sub Branches remain the property of the RSL and not the practitioner or the veteran.

If at any time the claimant wishes to take his or her case to another RSL practitioner, or ex service organisation or wishes the file to be returned to them, then copies of documents are to be returned to the claimant only. The original file remains the property of the RSL district or Sub Branch.

#### ARCHIVAL OF FILE

RSL District and Sub Branches are responsible for keeping archived files. These files are to be kept for a period of 7 years from the date of the last action before being destroyed.”

**[65]** There is also flowchart and a PAWS Training and Reimbursement Procedure authorised by the Board of RSL Queensland on 11 December 2014, setting out the manner in which training is organised and paid for including the expenses of trainees, which culminates in the relevant District or Sub-Branch paying expenses associated with the training including accommodation etc. for trainees and then seeking reimbursement from RSL Queensland.

**[66]** Under cross-examination Mr Ryan said that the Lowood Sub-Branch obtained a grant from RSL Queensland to purchase a PAWS building and that this is used to provide PAWS services. Mr Ryan also maintained that authorisation to act as a PAWS advocate provided by Lowood Sub-Branch did not constitute authorisation to act on behalf of the Lowood Sub-Branch. Rather, the authorisation is to act to the level of the recipient’s expertise, anywhere in Australia. Mr Ryan also maintained that RSL Queensland would not have the right to remove his capacity or that of any member, to provide volunteer services.

#### 3.4 Further submissions

**[67]** On 26 October 2017, I issued further Directions requiring RSL Queensland and Mr Ryan to address a number of additional points in relation to the RSL entities of which Mr Ryan is a member and whether he would be lawfully able to undertake volunteer PAWS work in the event that his membership ceased. In further submissions filed on 2 November 2017, RSL Queensland stated that Mr Ryan is a member of the Returned and Services League of Australia, within the jurisdiction of RSL Queensland. Pursuant to the constitution of RSL Queensland, Mr Ryan consequently became a member of the Lowood Sub-Branch. In relation to the question of whether Mr Ryan would be lawfully able to undertake volunteer work for PAWS in the event that his membership of any of the entities of which he is a member ceased, RSL Queensland submitted that consistent with the PAWS policy tendered by Mr Traini, the Sub-Branch (or where relevant District Branch) has exclusive capacity to accept or decline a PAWS volunteer.

**[68]** RSL Queensland further submitted that the involvement of RSL Queensland in PAWS services is limited to the arrangement of insurance for Sub-Branch and District volunteers. RSL Queensland also submitted that there is no requirement in any regulatory or governance documentation that PAWS volunteers including advocates must become or remain members of RSL Queensland or their relevant Sub-Branch. According to the submission, non-members routinely perform volunteer PAWS roles for Sub-Branches. This is also consistent with the fact that veterans are not required to be member of the RSL to receive PAWS services.

[69] RSL Queensland pointed to a letter of authority tendered by Mr Traini in which the Lowood Sub-Branch authorised a person as a Welfare Officer Level 2 in circumstances where that person was not, and is not currently, a member of RSL Queensland. Accordingly, Mr Ryan would lawfully be able to undertake volunteer work within the PAWS program for Sub-Branched should he not be a member of RSL Queensland or the Lowood Sub-Branch. Mr Ryan cannot and could not perform volunteer PAWS work for RSL Queensland as RSL Queensland does not have volunteer PAWS roles. The Sub-Branched are responsible to fund, resource, manage and provide these services.

[70] Further, RSL Queensland pointed to the second affidavit of Mr Traini which contains a confirmation letter from the Lowood Sub-Branch attaching letters of authorisation in respect of all welfare and Advocates approved at the Annual General Meeting of the Lowood Sub-Branch RSL held on 17 February 2017. Included in those letters of authority is a letter of authority for Mr Ryan as an Advocate Level 4 “*with the Lowood Sub-Branch*”.<sup>22</sup>

[71] In his further submissions, Mr Ryan stressed that a person cannot be a member of Sub-Branch without being a member of RSL Queensland. Mr Ryan agreed that a person does not have to be a member of RSL Queensland to be endorsed as an RSL Queensland PAWS volunteer. Volunteers are still trained by RSL Queensland and receive a certificate that is taken back to the Sub-Branch to enable the Sub-Branch to authorise the person to perform RSL Queensland Branch objects as per the RSL Queensland PAWS Policy. Mr Ryan further submitted that if membership of RSL Queensland is withdrawn, a former member is “not permitted to set foot on RSL property or participate in any RSL activities (except attend commemorative services) and would therefore not be able to be endorsed to to perform the functions of a welfare or pension officer or be trained by RSL Queensland.

[72] Mr Ryan tendered a number of internal mail communications entitled “*RSL Runner*” said to demonstrate that RSL Queensland’s submission that volunteer hours were aggregated under the banner of the RSL to assist members of the public who did not understand the difference between paid staff and volunteers was incorrect. The October and November editions of *RSL Runner* tendered by Mr Ryan states under the heading “*PAWS SKILLS TRAINING CONTINUES*”:

“Additional training dates have been scheduled for RSL Queensland Pensions Advocacy and Welfare Services volunteers. This complements existing training already provided through the Department of Veterans’ Affairs funded ADTP activity and ensures our volunteers meet our high standards of advocacy...”

[73] Mr Ryan also tendered a registration form to facilitate the provision of airfares and accommodation by RSL to persons attending such training. Further, Mr Ryan tendered a policy of RSL Queensland in relation to Veterans Indemnity Training Association Insurances provided by RSL Queensland to volunteers. This document states: “*It shall be RSL Policy for all practitioners who practice under the auspices of the RSL to carry out refresher training at any time between two and a half to three and a half years. The policy provides for a data base of practitioners to be maintained by RSL Queensland and states that: “any Sub-Branch which permits a practitioner to continue practicing in excess of the period of three and a half years will be summoned to show cause why the practitioner should not have his or her accreditation cancelled until that person can attend refresher training.”*”

[74] In a response to Mr Ryan’s further submissions, RSL Queensland contended that:

- Mr Ryan is a member of RSL Queensland and the Lowood Sub-Branch as evidenced by clause 13.1(a) of the Lowood Sub-Branch Constitution;
- While RSL Queensland can finally determine the expulsion of a member from the League, the Sub-Branch also has power to accept or reject membership, to reprimand or suspend, but where termination from the League is recommended by the Sub-Branch the authority for expulsion is made by RSL Queensland;
- Lowood Sub-Branch is responsible to resource and provide the PAWS services and has also provided the premises to the conduct of the PAWS program;
- RSL Queensland's role is a limited governance role and one which is relation to the PAWS programs includes the co-ordination of training and registration of "practitioners" as this relates to the placing of insurance by the National League for all Sub-Branch programs; and
- The role of the Sub-Branch is to provide PAWS services through Sub-Branch volunteers who need not be members of RSL Queensland or a Sub-Branch.

[75] RSL Queensland also submitted that Mr Ryan's contention that a member who has membership withdrawn is not permitted to set foot on RSL property and would not be able to be endorsed or trained to perform the functions of a pension or welfare officer, is without foundation and wrong, and there is no regulation within the governance structure of RSL Queensland or the Sub-Branch or in evidence, which mandates Mr Ryan's contention.

#### **4. Consideration**

[76] It is not contested that if Mr Ryan is performing volunteer work for RSL Queensland, he is a "worker" as defined in s.789FC(2) of the FW Act. After considering the evidence and submissions, I have concluded that Mr Ryan's volunteer services are provided to RSL Queensland. I have also concluded that RSL Queensland is carrying out the PAWS and conducting the workplace in which Mr Ryan works. I have reached these conclusions for the following reasons.

[77] The RSL in Australia consists of a National body, a State Branch in each state and Districts and Sub-Branches. The relationship between these entities is regulated by their respective constitutions. It is clear that the various entities have the same or similar objects, including providing assistance to veterans and their families to access pensions and benefits to which they are entitled and to provide welfare services to those in need.

[78] The objects of the League also include encouragement of members and citizens to serve the nation with the spirit of self-sacrifice and loyalty. State Branches – including RSL Queensland – are Members of the League at a national level. RSL Queensland's objects are consistent with those of the League and also include encouraging members as citizens to serve Australia with that spirit of self-sacrifice and loyalty with which they served as members of the Australian Defence Forces.

[79] The entity responsible for implementation of the objects of the League in Queensland is RSL Queensland. RSL Queensland implements the objects of the League as reflected in its own Constitution, through a range of mechanisms including District Branches and Sub-Branches to which its members are assigned. The objects of the League and of RSL Queensland are in turn reflected in the Constitutions of the Moreton District Branch and the

Lowood Sub-Branch. The Moreton District Branch and the Lowood Sub-Branch are required to comply with and are bound by the National Constitution and by-laws and RSL Queensland by-laws, rules, policies and directives. The Moreton District Branch and Lowood Sub-Branch are also required to operate in accordance with policies and directives of RSL Queensland.

**[80]** The activities of those entities are not carried out in their own right but rather as District and Sub-Branched of RSL Queensland. Mr Ryan is a member of RSL Queensland and consistent with the objects of the League and RSL Queensland, serves Australia by volunteering in order to assist with the carrying out of those objects. In particular Mr Ryan's volunteer work is directed at assisting veterans and their families to access welfare and services to which they are entitled. In the context of the over-arching and common objects of the RSL entities, PAWS is one of the mechanisms by which that object is implemented.

**[81]** I do not accept that RSL Queensland is simply providing a governance role with respect to the conduct of PAWS by Districts or Sub-Branched. The evidence establishes that RSL Queensland has made a binding policy for the conduct of PAWS. It does so through QVSAC which has as its mission, making recommendations to the Board of RSL Queensland about how RSL resources can be deployed to maximise benefits to the wider community. RSL Queensland stipulates the training that must be undertaken and the skill levels that must be maintained by volunteers. Volunteers are accredited as RSL Practitioners. They operate in the community on that basis.

**[82]** Volunteers are endorsed as RSL Practitioners by Districts and Sub-Branched pursuant to the policy of RSL Queensland and their continuation in that role is dependent on compliance with the Policy of RSL Queensland. The Policy put in place by RSL Queensland mandates the way in which Districts and Sub-Branched deal with PAWS volunteers. RSL Queensland ultimately pays for their training and associated expenses by reimbursing these amounts to the Districts and Sub-Branched who initially fund the training. The training ensures that those volunteers who are working to fulfil the objects of the League and RSL Queensland are doing so in an appropriate manner and with the required skills.

**[83]** RSL Queensland maintains a register of volunteers who meet its requirements. RSL Queensland facilitates insurance for PAWS volunteers. The fact that RSL Queensland does so is for reasons including the protection of its interests as the provider of the services they undertake. In short, by insuring the volunteers, RSL Queensland is also insuring itself against claims by the recipients of those services. This is apparent from the insurance policy statement which notes that action may be taken against the Sub-Branch and/or the RSL.

**[84]** The accreditation of PAWS volunteers and their authority as issued by District Branches and Sub-Branched requires volunteers to abide by a Code of Ethics and training obligations mandated by RSL Queensland. In the context of the Policy of RSL Queensland in relation to the PAWS volunteers and the regime of training they are required to undertake, their authorisation by District Branches and Sub-Branched is a function of the fact that as members of RSL Queensland they are assigned to a Sub-Branch.

**[85]** Further, the fact that PAWS volunteers are authorised to volunteer "with" a District or Sub-Branch, does not indicate that the District or Sub-Branched are independently conducting the PAWS work. Members of Sub-Branched do not hold such membership independently of RSL Queensland. They are members of Sub-Branched through their membership of RSL Queensland, and Sub-Branched are the mechanism by which they are mobilised to provide

services to those to whom the objects of RSL Queensland and the League are directed to assist.

**[86]** RSL Queensland also provides the infrastructure for the provision of PAWS. This includes computer equipment, electronic storage of files and other information, vehicles used by volunteers and in the case of the Lowood Sub-Branch, funding for the purchase of a building to be used for the provision of PAWS. The fact that District Branches and Sub-Branches may apply for funding from the Government to assist in the provision of PAWS does not result in a situation where those entities are providing the services independently of RSL Queensland.

**[87]** By virtue of the PAWS Policy, RSL Queensland has ownership of the case files for clients of PAWS, and those files are its property. In short, the role of RSL Queensland goes beyond governance and is essentially that of the provider of PAWS. The fact that PAWS is delivered through District and Sub-Branches does not change this fact. I do not accept the submission of RSL Queensland that its involvement in PAWS is limited to the arrangement of insurance for volunteers and that the District Branches and Sub-Branches are responsible for the funding, resourcing, managing and provision of those services. Even the insurance policy covering PAWS volunteers states that they practice under the auspices of the RSL.

**[88]** The reality is that there is circularity between the various entities so that the services are provided by RSL Queensland. It is that body which has effective control over the District and Sub-Branches with respect to their delivery of PAWS. While District or Sub-Branches may apply for funding from Government to undertake PAWS, that funding is applied for and provided in the context of a framework of rules and regulations about how it will be spent and the policies that underpin the services which the funding will be used to provide. That framework of rules and regulations results in effective control over the provision of PAWS being in the hands of RSL Queensland.

**[89]** Mr Ryan's volunteer services as an advocate are provided to RSL Queensland. Mr Ryan is a member of RSL Queensland. His membership of the Lowood Sub-Branch does not exist independently of his membership of RSL Queensland. Volunteers such as Mr Ryan are an emanation of RSL Queensland in the community. They drive RSL branded cars and wear RSL branded clothing. As RSL Queensland states in its submission to the 2012 Review of the not-for-profit sector, members of RSL Queensland provide volunteer services to RSL Queensland through the District and Sub-Branches. RSL Queensland aggregates volunteer hours and presents them to the public as being provided by RSL Queensland.

**[90]** These statements are made in more than a "*marketing sense*" and I do not accept the characterisation or the statements in the evidence of Mr Traini. Persons who receive the services of an RSL Practitioner or volunteer are – if the public statements made by RSL Queensland are to be believed – receiving those services from RSL Queensland and not from District or Sub-Branches. The District or Sub-Branches are simply the geographical centre for the provision of the services, and the mechanism by which RSL Queensland delivers the services.

**[91]** I accept that a volunteer is not required to be a member of RSL Queensland in order to be involved in the provision of PAWS. I also accept that RSL Queensland may not have the power to prevent a District or Sub-Branch endorsing a particular person as a volunteer, at least not pre-emptively. However, RSL Queensland has the power to change the policies and

rules governing PAWS and to do so unilaterally. By virtue of their constitutions, District and Sub-Branches would be required to accept any such alteration. RSL Queensland also has the power to impact on the ability of a person to volunteer by measures such as refusing to provide training, refusing to reimburse expenses or by removing the person from the register of RSL Practitioners. In any event, the fact that District or Sub-Branches have the ability to endorse persons of their choice as PAWS volunteers, does not alter the fact that the volunteer services are provided to RSL Queensland.

[92] Further, I am of the view that RSL Queensland conducts the workplace in which PAWS is carried out. RSL Queensland does so by virtue of the fact that PAWS volunteers are members of RSL Queensland and are presented to the community and to those for whom services are provided, as members of RSL Queensland. Mr Ryan's uncontested evidence was that the building from which the Lowood Sub-Branch delivers PAWS was provided by a grant from RSL Queensland. Equipment of RSL Queensland including computers and devices to electronically store files is provided by RSL Queensland. Vehicles used by PAWS volunteers are also provided by RSL Queensland presumably to travel to the homes of recipients to carry out services. Mr Ryan's evidence was that much of the volunteer work is undertaken by video link via which he appears in tribunals and other forums where he undertakes his work. While District or Sub-Branches store files, the files are the property of RSL Queensland.

[93] As a Full Bench of the Commission held in *Bowker and Others v DP World Melbourne Limited*<sup>23</sup> the concept of being at work encompasses both the performance of work at any time or location, and when the worker is engaged in some other activity which is permitted by their employer. The question of when a worker is "at work" will also depend on context including custom and practice and the nature of the worker's contract.<sup>24</sup> As an RSL Practitioner, Mr Ryan is at work whenever and wherever he is representing a PAWS client or conducting work on behalf of a PAWS client or potential client. As RSL Queensland conducts PAWS, Mr Ryan is at work in a constitutionally covered business when he is performing volunteer work.

## 5. Conclusion

[94] For these reasons I dismiss the jurisdictional objection of RSL Queensland. In doing so, I make no finding as to whether the conduct complained of by Mr Ryan is capable of being within the definition of bullying in the FW Act or able to be the subject of an FWC order to stop bullying. It is not necessary to determine whether or not the Lowood Sub-Branch is a person conducting a business or undertaking or a constitutionally covered business. Mr Ryan makes no claim against the Lowood Sub-Branch or any of its officers. Mr Ryan's application for an FWC order to stop bullying order may proceed to be heard and will be listed for Directions. The amendment sought by Mr Ryan to his application will be dealt with at that time.



DEPUTY PRESIDENT

*Appearances:*

Mr P. Ryan appeared on his own behalf.  
Mr T. Longwill of McCullough Robertson for the Respondent.

*Hearing details:*

Brisbane.  
15 June.  
2017.

*Final written submissions:*

Respondent on 26 October 2017.  
Applicant on 10 November 2017.

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<sup>1</sup> See the discussion of the concept of a volunteer worker in *Gaylene May McDonald* [2016] FWC 300.

<sup>2</sup> *Ibid* articles 6 and 7.

<sup>3</sup> *Ibid* article 11.1(g), (h) or (i).

<sup>4</sup> Exhibit 1 Annexure LT2 articles 3(j) – (r).

<sup>5</sup> *Ibid* article 4.2.

<sup>6</sup> *Ibid* article 6.

<sup>7</sup> Exhibit 1 – Annexure LT1 articles 3.2(a) – (k).

<sup>8</sup> Exhibit 2 – Second Affidavit of Luke Traini – Annexures.

<sup>9</sup> Transcript 15 June 2017 PN181-198.

<sup>10</sup> <https://www.rslqld.org/ADF-Community/Help-with-DVA-Claims> extracted in Mr Ryan’s submissions at page 4 para [20].

<sup>11</sup> Australian Government “Review of not-for-profit governance arrangements” Consultation Paper dated 8 December 2011  
Submission by RSL (Queensland Branch) Annexure 11 to Mr Ryan’s Submission.

<sup>12</sup> Transcript 15 June 2017 PN223 – 224.

<sup>13</sup> *Ibid* PN225.

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<sup>14</sup> Exhibit 3 Affidavit of Peter Ryan Annexure 5.

<sup>15</sup> Ibid Annexure 6.

<sup>16</sup> [www.rslqld.org/ADF-Community/Help-with-DVA-Claims](http://www.rslqld.org/ADF-Community/Help-with-DVA-Claims).

<sup>17</sup> Exhibit 4 Affidavit of Peter Charles Ryan – Annexure 8.

<sup>18</sup> RSL Queensland Constitution Article 3.

<sup>19</sup> Exhibit 4 Affidavit of Peter Charles Ryan - Annexure 11 at 2.6.

<sup>20</sup> Exhibit 4 Affidavit of Peter Charles Ryan - Annexure 11 at 4.6.

<sup>21</sup> Exhibit 4 Affidavit of Peter Charles Ryan - Annexure 13.

<sup>22</sup> Exhibit 2 Second Affidavit of Luke Traini – Annexure 2LT#16.

<sup>23</sup> [2014] FWCFB 9227.

<sup>24</sup> Ibid at [51] and [53].