



Royal Commission
into Aged Care Quality and Safety

**STATEMENT OF NICOLE SUZANNE FARRELL
IN RESPONSE TO NTG-0490**

Name: Nicole Suzanne Farrell

Date of birth: [REDACTED]

Address: [REDACTED]

Occupation: Senior Human Resources Business Partner

Date: 3 October 2019

1. This statement made by me accurately sets out the evidence that I am prepared to give to the Royal Commission into Aged Care Quality and Safety. This statement is true and correct to the best of my knowledge and belief.
2. Where direct speech is referred to in this statement, it is provided in words or words to the effect of those, which to the best of my recollection, were used at the time.
3. The views I express in this statement are my own based on my education, training and experience. They are not intended to represent any views of my employer.

Professional background

4. I am currently the Senior Human Resources Business Partner of Jemena Limited. I have been in this role since 5 January 2019.
5. Prior to working at Jemena Limited, I worked for Lotte Duty Free Limited for 7 months as a Human Resources Business Partner.
6. Prior to Lotte Duty Free, I worked at Japara Healthcare Limited as Senior Human Resources Business Partner from 20 January 2014 to 12 July 2018.
7. My qualifications, relevant past experience and involvement in the aged care sector are set out in my curriculum vitae: **JAH.0032.0001.0001 (NF-1)**.

Question 4: Provide a description of your role and responsibilities as a Senior Human Resources Business Partner for Japara Healthcare Limited (formerly Aged Care Services Australia Group Pty Ltd) (Japara).

8. My role and responsibilities as a former Senior Human Resources Business Partner for Japara are set out in the Senior Human Resources Advisor - Position description: **JAH.0030.0001.0130 (NF-2)**. Prior to about 2017, the position was known as Senior Human Resources Advisor, although the role remained the same despite the change of name.

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Question 5: Was personal care worker employed by Japara in 2015 to 2016, UA UA (employee), covered by an Award or Enterprise Agreement? If yes, what was the name of that Award and or Enterprise Agreement?

9. The employee was covered by the Enterprise Agreement 2014 between Japara, the Australian Nursing and Midwifery Federation and the Health Services Union: JAH.0030.0001.0001 (NF-3).

Question 6: Did Japara have any policies or procedures relating to employee discipline in the period 2015 to 2016 which applied to the employee? If yes, what were the policy and or procedures called?

10. In the period 2015 to 2016, Japara's Employee Discipline Procedure applied to the employee: JAH.0031.0001.0001 (NF-4).

Question 7: Describe your involvement in the investigation or consideration of any allegations made against the employee in the period 2015 and 2016.

11. In my role as a Senior Human Resources Advisor, I was the human resources representative for Bayview Aged Care in the period 2015 and 2016, along with about 11 other Japara homes. I was essentially the first point of contact for human resources matters arising in respect of those homes. Typically, such matters were brought to my attention via the respective Facility Managers.
12. For allegations raised in relation to the employee in the period 2015 and 2016, it was my role to gather information and manage the disciplinary process set out in the Employee Discipline Procedure and the employee's Enterprise Agreement. This involved working in consultation with the Bayview Facility Manager and with my colleagues in the human resources team, including the General Manager of Human Resources, Ashley Van Winkel, to whom provided guidance, supervision and direction on the outcomes as described below. It was also my role to deal with representatives of the union representing the employee, the Health Workers Union. As I describe in more detail below, I attended meetings involving the employee and was involved in preparing correspondence concerning the allegations made against him and the outcome of Japara's fact gathering process.

First Written Warning

13. On 23 March 2015, Bayview Facility Manager Di Mnich sent the employee a letter, copied to me, concerning allegations made against the employee which had come to Japara's attention on 18 and 19 March 2015 and which were described in the letter: JAH.0126.001.0427 (NF-5). The letter noted that the employee was advised on 23 March 2015 of being suspended from duty. In the letter, Ms Mnich requested that the employee attend a meeting with Ms Mnich and my colleague, Human Resources Officer [REDACTED] on 27 March 2015, along with any support person or union official nominated by the employee, to discuss the allegations and afford the employee an opportunity to respond to them. Whilst I cannot now recall the specifics, it is likely that I was involved in preparing this letter as it was Japara's practice for such letters to be prepared by

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representatives of the human resources team for sending by the Facility Manager, and I was copied to the letter.

14. Ms Mnich sent a subsequent letter to the employee on 9 April 2015, copied to [REDACTED] **JAH.0126.001.0430 (NF-6)**. The letter records that the employee attended a meeting at Japara Bayview on 7 April 2015 with Ms Mnich, [REDACTED] and [REDACTED] of the Health Workers Union. The letter notified the employee that following that meeting, Japara was satisfied that the allegations set out in the letter had been substantiated, and that they constituted serious misconduct. The letter stated that in the absence of proven wilful and malicious intent, Japara had stopped short of terminating the employee's employment, and the employee was issued with a first and final written warning in accordance with the Discipline Procedure. The letter also set out an improvement plan which the employee was required to complete.
15. On 10 April 2015, [REDACTED] of the Health Workers Union raised some concerns regarding Japara's 9 April 2015 letter via an email to Ms Mnich, which email was forwarded by Ms Mnich to [REDACTED] and Mr Van Winkel that day: **JAH.0126.002.0038 (NF-7)**. In response, [REDACTED] sent a letter to [REDACTED] on 15 April 2015, copied to Ms Mnich: **JAH.0126.002.0031 (NF-8)**. [REDACTED] sent a follow up email to [REDACTED] and Ms Mnich on 16 April 2015: **JAH.0126.002.0006 (NF-9)**, to which I responded via letter dated 22 April 2015, copied to Ms Mnich, Mr Van Winkel and [REDACTED] **JAH.0126.001.0462 (NF-10)**.
16. Subsequently, on 4 June 2015, I sent [REDACTED] a further letter, copied to Mr Van Winkel, Ms Mnich and the employee: **JAH.0126.001.0434 (NF-11)**. By this letter, I advised that Japara had reviewed its decision in relation to the first and final written warning issued on 9 April 2015 and concluded that 'in the absence of wilful and deliberate misconduct, to warrant "serious misconduct" would be unreasonable', and therefore the first and final warning was to be removed from the employee's file and a first written warning issued instead, with the existing improvement plan to be recorded as completed on the file. On the same day, Ms Mnich sent a letter to the employee, copied to [REDACTED] and me, recording the first written warning foreshadowed in my letter to [REDACTED]: **JAH.0126.001.0432 (NF-12)**. By this letter, Japara advised the employee that it was satisfied the allegations of misconduct recorded in the letter had been substantiated.

Second Written Warning

17. On 15 January 2016, approximately 10 months after the events the subject of the first written warning, Ms Mnich sent an email to me and some other Japara employees attaching an incident report of the same day, recording an allegation made against the employee: **JAH.0126.002.0063 (NF-13)**; **JAH.0023.001.0132 (NF-14)**.
18. On 18 January 2016, Ms Mnich sent the employee a letter, copied to me, advising that the employee was suspended from duty effective from 15 January 2016 until further notice: **JAH.0126.001.0415 (NF-15)**. Also on 18 January 2016, I sent Ms Mnich an email setting out certain questions for her to follow up on in respect of the allegation made against the employee, to which Ms Mnich responded on 19 January 2016: **JAH.0126.002.0059 (NF-16)**.

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19. Ms Mnich sent the employee a further letter on 19 January 2016, copied to me, inviting the employee to attend a meeting on 25 January 2016 with Ms Mnich and me, and any support person or union official, to discuss the allegation set out in the letter and afford the employee an opportunity to respond: **JAH.0126.001.0416 (NF-17)**. A similar letter was sent by Ms Mnich to the employee, copied to me, on 22 January 2016 advising that the meeting was now scheduled for 28 January 2016: **JAH.0126.001.0418 (NF-18)**. A further letter was sent by Ms Mnich to the employee, copied to me, on 28 January 2016 recording difficulties Japara was having in contacting the employee: **JAH.0126.001.0420 (NF-19)**, and the meeting was ultimately scheduled via [REDACTED] of the Health Workers Union for 10:30 am on 1 February 2016: **JAH.0021.001.8384 (NF-20)**.
20. On 1 February 2016, following our meeting with the employee and [REDACTED] I sent Ms Mnich an email outlining dot points for a proposed telephone discussion between Ms Mnich and the employee to advise the employee of the outcome of the meeting: **JAH.0126.002.0081 (NF-21)**.
21. On 5 February 2016, Ms Mnich sent the employee a letter, copied to me, advising that Japara was satisfied that the concerns regarding misconduct set out in the letter had been substantiated: **JAH.0126.001.0421 (NF-22)**. The employee was issued with a second written warning and he was directed to comply with an improvement plan by 19 February 2016.
22. On 17 February 2016, I received a letter from [REDACTED] of the Health Workers Union. In the letter, [REDACTED] raised concerns with respect to the outcome of the meeting held on 1 February 2016 and requested clarification of certain matters: **JAH.0126.002.0051 (NF-23)**. Human Resources Manager Michelle Sultana responded to [REDACTED] by letter dated 3 March 2016, copied to me, advising of her review of the incident and confirming Japara's earlier finding of misconduct: **JAH.0126.002.0050 (NF-24)**. The letter also noted the outcome of the fact gathering process resulting in the final written warning issued to the employee that day, which I outline below.

Final Written Warning

23. On 12 February 2016, Quality Manager Narelle Wood sent me and Ms Mnich an email attaching a statement prepared by Ms Wood: **JAH.0126.002.0087 (NF-25)**. The statement recorded allegations made against the employee which had been reported to Ms Wood and Ms Mnich that day.
24. On 15 February 2016, Ms Mnich sent the employee a letter, copied to me, advising that the employee had been suspended from duty effective from 12 February 2016 until further notice: **JAH.0126.001.0405 (NF-26)**.
25. On 16 February 2016, Ms Mnich sent the employee a further letter, copied to me, inviting the employee to attend a meeting on 22 February 2016 with Ms Mnich and me, and any support person or union official, to discuss the allegations set out in the letter and afford the employee an opportunity to respond: **JAH.0126.001.0406 (NF-27)**. The proposed meeting was then rescheduled to 29 February 2016 to accommodate [REDACTED] of the Health Workers Union: **JAH.0021.001.8434 (NF-28)**, and the employee was advised by

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letter dated 24 February 2016 from Ms Mnich, copied to me: **JAH.0126.002.0122 (NF-29)**.

26. Following the meeting with the employee on 29 February 2016, I sent Japara employee Angela Manganas, who attended the meeting, an email outlining dot points for a proposed telephone discussion between Ms Manganas and the employee to advise the employee of the outcome of the meeting: **JAH.0126.002.0124 (NF-30)**.
27. On 3 March 2016, Ms Manganas sent the employee a letter, copied to Ms Mnich and me, advising that following the meeting on 29 February, Japara was satisfied that the concerns regarding misconduct set out in the letter had been substantiated: **JAH.0126.001.0409 (NF-31)**. The employee was issued with a final written warning and he was directed to comply, by 15 March 2016, with the improvement plan from the second written warning which was found to be incomplete at the time of the 29 February 2016 meeting.

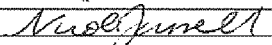
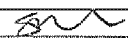
Final Incident

28. On 18 April 2016, Ms Mnich sent to me and some other Japara employees an email attaching a letter she had received from a resident's daughter, concerning an alleged assault of the resident by the employee on 16 April 2016: **JAH.0126.002.0175 (NF-32)**; **JAH.0126.002.0163 (NF-33)**. As is recorded in the subsequent email from Mr Van Winkel to Ms Mnich at **JAH.0126.002.0175 (NF-32)**, I was away on 18 April 2016 and was due to commence annual leave later that week, so Human Resources Manager Michelle Sultana managed this matter in my absence. I do not believe I had any further substantive involvement in the matter after this time, although I note that I witnessed Ms Sultana's signing of the Deed of Agreement between Japara and the employee on 30 May 2016: **JAH.0126.002.0230 (NF-34)**.
29. For completeness, I note that I have been shown the following documents in preparing this statement which indicate that the employee failed to attend a scheduled meeting with Ms Mnich and Ms Sultana on 3 May 2016 in respect of the allegations raised against him: **JAH.0126.002.0185 (NF-35)**, and that he indicated his intention to resign effective 6 May 2016, which resignation was accepted by Japara on 9 May 2016: **JAH.0126.002.0233 (NF-36)**; **JAH.0126.002.0243 (NF-38)**.

Question 8: Were any of the allegations against the employee proven to Japara's satisfaction?

- a. **If so, which allegations were substantiated and which were not?**
- b. **Was a pattern identified?**

30. As I outline above in response to question 7, Japara was satisfied that the allegations against the employee recorded in the first written warning (concerning the allegations made in March 2015), the second written warning (concerning the allegations made in January 2016) and the final written warning (concerning the allegations made in February 2016) were substantiated. Japara did not make any findings in respect of the allegations made against the employee on 16 April 2016, as the employee resigned prior to the conclusion of Japara's employee discipline process.

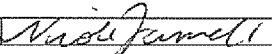
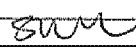
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31. In my email to Ms Manganas of 2 March 2016 in anticipation of her telephone call with the employee (JAH.0126.002.0124 (NF-30)), when Japara made the decision to issue a final written warning, I noted that the allegations the subject of that fact gathering process, together with those set out in Japara's earlier second written warning, had a pattern that Japara could not ignore. I also directed Ms Manganas to ask the employee to think about whether this was a role for him. This was the second time I had directed a Japara employee to do so, the first being to Ms Mnich in my email of 1 February 2016 (JAH.0126.002.0081 (NF-21)).

Question 9: Describe Japara's usual practice when issuing a written warning to an employee about misconduct, including whether the warning would usually include a summary of the misconduct leading to that warning being issued? How many warnings would an employee usually be given by Japara Bayview prior to dismissal?

32. In my experience, Japara's usual practice when issuing a written warning to an employee about misconduct followed the procedure outlined in the Employee Discipline Procedure, and in particular the steps set out in paragraph 3 of that document. In short, that process involved: gathering information about the alleged misconduct; determining whether to suspend the employee pending the fact gathering process; providing written notification to the employee of the alleged misconduct and scheduling a meeting for the employee to attend, along with any support person or independent representative, to respond to the allegations; considering any response of the employee to the allegations; determining the outcome of the fact gathering process; providing written notification to the employee of the outcome of the fact gathering process and of any required remedial measures; and monitoring the employees' progress.
33. When providing its written notification of the outcome of an fact gathering process, including where the outcome involved the issuing of a written warning to the employee, Japara's usual practice was to include a summary of the alleged misconduct and any response by the employee to the allegations, and to state whether Japara considered the allegations to have been substantiated. Where a written warning was issued as a result of allegations found to have been substantiated, the outcome letter would also usually detail any prior counselling and warnings issued to the employee, any required remedial measures, information on how to dispute the warning, and the potential outcome should the employee engage in any further or similar incidents in the future.
34. Pursuant to the Enterprise Agreement in force at the time, and in line with Japara's Employee Discipline Procedure, an employee would usually be given three written warnings for misconduct prior to dismissal (noting that if an employee had a continuous period of 12 months following a written warning without incurring further written warnings, then prior disciplinary outcomes were to be disregarded).
35. For substantiated allegations amounting to 'serious misconduct', as defined in the *Fair Work Act 2009* and set out in the Employee Discipline Procedure, an employee could either: (1) be issued with a first and final warning if Japara, having considered all the circumstances, considered that course to be appropriate and did not wish to summarily terminate the staff member's employment; or (2) be summarily dismissed. The

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determination of whether misconduct amounted to 'serious misconduct' was undertaken in consultation with the General Manager of Human Resources.

Question 10: If the answer to question 8 is yes, explain what steps you and/or Japara took to ensure resident care and safety in response to substantiated misconduct by the employee. Explain why those steps were considered appropriate. Explain what steps were considered by Japara but did not proceed, and why.

36. The steps Japara took to ensure resident care and safety in response to substantiated misconduct by the employee were to notify the employee of the consequences of the written warnings issued to him (namely that further incidents could result in further disciplinary action and termination of employment) and to require the employee to comply with the improvement plan set out in each written warning issued to him. Responsibility for the employee's compliance with the improvement plans rested with the Facility Manger. I do not recall specifically why these remedial steps were considered appropriate in respect of this employee. However, in my experience, the remedial action required as part of a written warning would be directed to addressing the specific allegations of misconduct found against the employee in an attempt to avoid a repeat of any such misconduct.
37. I do not recall what steps were considered by Japara but did not proceed, nor why.

Question 11: Was any briefing given to the Board about the employee's misconduct?

- a. **If so, please describe the briefing and attach any briefing documents including minutes.**
- b. **If not, then why not?**
38. I am not aware of any briefing given to the Board about the employee's misconduct. It was not part of my role to report to the Board. As I state above, I reported to the General Manager of Human Resources, Mr Van Winkel.

Signed: Nicole Farrell
 Date: 3 October 2019
 Witness: [Signature]
 Date: 3 October 2019

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