



27 October 2018

Mr Paul Baxter  
Commissioner  
Fire and Rescue NSW  
1 Amarina Avenue  
GREENACRE NSW 2190

Dear Mr Baxter,

I refer to the Department's emails of 12 October and 25 October and Assistant Commissioner Connellan's letter of 18 October, all of which concern Statutory Declarations for the purposes Award Carers Leave provisions.

I refer also to the letter issued to an FBEU member by Regional West management yesterday claiming that our member's "*Statutory Declaration in relation to your claim for Carer's leave to be approved for the dates below, has not met the requirements of clause 22.1 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2017*", and requiring our member to "*provide a Statutory Declaration that does include all of this required information so that your claim can be further considered*".

It is disappointing (but unsurprising) to note that the rejected Statutory Declaration was the form recommended by the Union for use by its members in SITREP 35/17.

The Department has already acknowledged that the FRNSW Statutory Declaration form is not required, so there is presumably no issue with the Union's pro-forma:

*"FRNSW will accept the NSW statutory declaration form to substantiate Carers leave applications, provided it fulfils the requirements at clause 22.1, Carers Leave."*

FRNSW email to FBEU, 12 October 2017 and  
FRNSW correspondence to FBEU, 18 October 2017

*"FRNSW will not reject a claim because of the type of Statutory Declaration form used, provided it is a NSW Statutory Declaration under the Oaths Act 1900 NSW."*

FRNSW Memorandum to Area Commanders and Business Managers, 25 October 2017

This latter memorandum then repeats the initial FRNSW email's assertion that "*there are 5 [Award] requirements*:"

- 1. The person being cared for must be "ill" (Cl.22.1.1)*
- 2. The statutory declaration must establish, "the illness of the person concerned and that the illness is such as to require care by another person" (Cl.22.1.2)*
- 3. The person must be responsible for the care of the person concerned (Cl. 22.1.3.1)*
- 4. The person concerned must be one of those listed under sub clause 22.1.3.2.*
- 5. If it is a "relative" of the employee, they must meet the definition under sub clause 22.1.3.2.5*

As you would be aware, the Oaths Act 1900 (NSW) Statutory Declaration recommended by the Union for use by its members in SITREP 35/17 states that:

**Fire Brigade Employees' Union of New South Wales**

1-7 Belmore Street Surry Hills NSW 2010

Telephone 02 9218 3444 Facsimile 02 9218 3488 E-mail office@fbeu.net Website www.fbeu.net

I, ..... [name of declarant] ..... , do solemnly and sincerely declare that I was required to care for a person (being a person within the class of persons set out in the Award's Carer's Leave clause) whose illness was such as to require care by another person and I was the other person responsible for the care of that person on ..... [date or dates upon which care was required] ..... and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

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Consider this declaration against the Department's claimed five Award requirements:

1. *The person being cared for must be "ill" (Cl.22.1.1)*

This is not a stand-alone requirement, and is satisfied in any event by point 2.

2. *The statutory declaration must establish, "the Illness of the person concerned and that the illness is such as to require care by another person" (Cl.22.1.2)*

The illness of the person and the declarant's requirement to care for them is plainly established by the declaration that the declarant "**was required to care for a person ... whose illness was such ...**"

3. *The person must be responsible for the care of the person concerned (Cl. 22.1.3.1)*

This requirement is satisfied by the declaration's "... whose illness was such as to require care by another person **and I was the other person responsible for the care of that person ...**"

4. *The person concerned must be one of those listed under sub clause 22.1.3.2.*

This requirement is satisfied by the declaration's "I was required to care for a person **(being a person within the class of persons set out in the Award's Carer's Leave clause)** whose illness was such ..."

5. *If it is a "relative" of the employee, they must meet the definition under sub clause 22.1.3.2.5*

Another unnecessarily repetitive point that is plainly satisfied by point 4.

So there are three Award requirements, not five, and all three of these requirements are satisfied by the Union's recommended Statutory Declaration.

If you do not confirm in writing by 1700 hours today that the Statutory Declaration submitted by our member for Carers Leave taken on 17 October 2017 satisfied the Award's requirements and has therefore been accepted then the Union will respond accordingly.

Yours sincerely,



Leighton Drury  
State Secretary