



SITREP 41/17

Health and Fitness testing – update #7

New D&D Award made

SITREP 36's Update #6 concluded with the observation after months of conciliation that "*the only real point of disagreement left [is] the confidentiality of your health check results*". A Full Bench (three members) of the Industrial Relations Commission sat on Wednesday this week to rule on this final question.

To cut a long argument short, the relevant provision of the (then) current 2015 Award made it clear that the Department would not receive your test results or medical information without your consent:

The independent occupational physician will provide no other information or advice to FRNSW concerning the firefighter's health and fitness without the firefighter's consent.

The Department sought to reverse this from no information, to all information, with a new Award provision that would read:

Where a firefighter is notified as unfit by the IOP, either temporarily or permanently, the IOP is to also supply FRNSW with all related medical information.

After written and verbal submissions from both parties on Wednesday, the Full Bench eventually landed somewhere in middle (but much closer to our side than theirs) by rejecting the Department's claim and extending the current wording to now allow for the provision of some information if the doctor thinks it necessary, but only to the extent necessary "for the safe management of the firefighter":

The independent occupational physician will provide no other information or advice to FRNSW concerning the firefighter's health and fitness without the firefighter's consent apart from such information regarding the specified requirements or restrictions as, in the professional opinion of the independent occupational physician, is necessary for the safe management of the firefighter.

While we would have preferred to see the wording left unchanged, it was a much better result than the unrestricted assault on members' privacy sought by the Department. The Award made this week by the Full Bench is a good result in all of the circumstances, with the status quo successfully defended and some minor improvements made.

Members should note that the new 2017 D&D Award has now been made by order of the Full Bench and so will not be put to a General Meeting vote. This last occurred with the arbitration of our Permanent and Retained Awards in 2008. A copy of the new 2017 Award that shows all of the changes made to the previous 2015 Award can be found via the online version of this SITREP.

Fitness Drill agreed

Broadly supportive feedback from members on the proposed Fitness Drill (see SITREPs 32, 33 and 34) led to agreement being reached on this aspect of the health and fitness program without the need for the IRC's intervention. A copy of the now-agreed Fitness Drill (which is a drill and not a pass/fail test) can also be found with the online version of this SITREP.

The Union and Department must now negotiate and finalise the remaining details and forms required to implement the health checks by mid-March or the Full Bench will also rule on these and any other remaining matters, so more to follow in 2018.

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Northern Rivers and Cyclone Debbie – update #4

The Local Court heard this prosecution back on 7 November and handed down its decision at 10am this morning. In a disappointing judgment (a link to which can be found in the online version of this SITREP), the court dismissed our summons and in a spiteful Christmas Eve gesture, the Department then immediately made application for costs against us. The Union will reserve further comment on the judgment until we have had the opportunity to carefully review it and its implications.

The central argument in this matter was when and where a recall finishes, and whether or not members can be stood down without pay during the course of a recall. The Union argued that a recall ceases when the firefighter returns to the station/location at which the recall commenced, and that members are therefore entitled to overtime for the entire absence. The Department argued that it could end a recall or stand down a firefighter on recall without pay whenever it saw fit (even if the firefighter is unable to return home) and as such, that it is only required to pay overtime for hours actually worked. The Department did however concede that if it did stand down members away from home then it would be required to pay the accommodation allowance (currently \$226.45 per night) and in the case of the Northern Rivers deployment, that it owed members additional meal and km payments.

Whilst these outstanding payments are important, the Union's primarily intention with this prosecution was to clarify the entitlements of members on recall to protracted incidents after years of disputation and confusion. The Department further clouded the operation of overtime and Clause 9 in a separate dispute last week by arguing that members who are not recalled to an incident or to maintain minimum staffing are entitled to a minimum payment of 15 minutes only. The IRC sided with the Union and the senior officer member in that dispute but there will be more on that, on today's judgment and on the procedures for recalls to major incidents/strike forces (a Commissioner's Order regarding this is already under negotiation) in 2018.

SAM wrong on Stand Bys and Outduties

An error with the Department's IT systems has been revealed after a permanent member who worked a Stand By for more than four hours at a retained station, and therefore worked an Outduty, was unable to record that Outduty in SAM.

The Department has since confirmed that SAM will only record an Outduty if the period worked at another station is more than 8 hours, which is contrary to the Award. A Stand By is only required to extend beyond 8 hours in order to become an Outduty if the member works a roster that includes a 24 hour shift and is covering the absence of a member who was rostered to work a 24 hour shift (see subclause 8.2.4.3), otherwise, the four hour limit on Stand Bys applies.

While the Department has advised that it will now re-program early next year and will be reviewing Stand Bys worked for under payments of the Relieving Allowance, we advise against relying on management for this and recommend that members who think they might have been caught by this systems error to also check for themselves. In the interim, permanent members who work an Outduty that is less than 8 hours should ask Zone management to report it to Operational Staffing so that manual records and payment of the Relieving Allowance can be made pending the IT fix.

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CAFS staffing resolved – update #1

It was back to the IRC yet again last week after months of discussions with the Department failed to resolve a dispute started back in August when zone management decided to reinterpret our CAFS staffing agreement (see SITREP 18/16) by directing *“that the use of CAFS for HR’s [hazard reductions] is at the normal retained firefighter rate not the relief duty rate as per the agreement. HR’s are known and planned events not emergency incidents.”* Our retained members turned to the Union for help in what should have been a simple clarification, but instead turned into another unnecessary 5 month argument.

Last week’s IRC proceedings upheld the Union’s contention that those members should, and would, be paid at Relief Duty rates. The IRC Commissioner put the question beyond doubt by adding additional words to point 1.4 of the agreement (as set out in our letter of 17 May 2016) so that it now reads:

- 1.4 The response/deployment of the heavy CAFS tanker with retained staff to any incident (including non-CAFS incidents, or to stand by or move up elsewhere, **including where the employer requires its use for hazard reduction work**) will result in those retained staff being paid at Relief Duty rates.

Tamworth to go 10/14 – update #2

Turning to another issue that ended up in the IRC after the Department refused to honour its agreement with the Union, 424 Tamworth finally went 10/14 on 13 December. An FRNSW intranet story on 15 December reported the local Nationals MP, Kevin Anderson describing it as a *“big win for the people of Tamworth”*. Not the people of Casino or Glen Innes though, who thanks to the Berkejiklian Government just lost their Station Officers after almost 100 years of service.

SITREP 36 confirmed the Union’s commitment to defend the right of the Station Officers at Glen Innes and Inverell to the option of transferring to Tamworth or remaining at their stations. And that is how it ended up, with the former agreeing to transfer and the latter still in place. As a result the IRC saw no need to intervene, but the decision by senior management to walk away from their verbal agreement with me on this issue has done nothing to improve relations between the Department and Union.

We welcome the upgrade to Tamworth. The way the Department went about it is another matter though, and Minister Grant’s refusal to intervene and stop the removal of these Station Officer jobs again exposes the Nationals’ claim to be the champions of regional NSW for the hollow sham that it is.

Union Office Christmas - New Year shutdown

The Union Office will close at midday today and re-open on Tuesday 2 January. Members requiring assistance over this time may contact a State Committee official – for details see www.fbeu.net/contact

On behalf of the Union’s officials, industrial and administrative staff, I wish all members and your families the compliments of the Season.

Leighton Drury
State Secretary

Friday 22 December 2017