



# SitRep 15

## Retained COVID-19 update

Your Union has been made aware that the Department sent out correspondence to some members last night incorrectly claimed that the FBEU had agreed to a range of measures. This information was in relation to Retained members and the process for Retained response to incidents as we face the COVID-19 pandemic.

This is disappointing and your Union is extremely concerned that on the very day that an IMT was put in place to allegedly supply a "single source of the truth," the Department issued an instruction that has incorrectly claimed FBEU agreement, further, this lack of truth document has only been selectively sent out to half the membership. We know these times are challenging but we expect better and you deserve better.

Although your Union agreed with some of the measures in the document, like payment to Retained so that no member will be worse off because of COVID-19 measures, we want members to be clear we HAVE NOT agreed to:

*"All On Call Retained firefighters are required to minimise their potential exposure to COVID19 whilst responding to fire calls. This is achieved through physical distancing between each other. To achieve this only two firefighters, one must be IM trained, will respond to the fire call on the fire truck.*

*The other firefighters, a minimum of two, will travel under normal road conditions in their private vehicle to the call. These firefighters will remain in their vehicles until they are tasked by the Incident Controller or it is communicated that they are no longer required. This is to ensure workplace distancing and is in accordance with the Federal and State Government's instructions on social distancing.*

*Only if required via message from IC, is a subsequent support vehicle from the same station to respond to any incident with maximum of 2.*

*If an incident escalates and another station is responded they are to follow the same protocol.*

*All firefighters available in GARTAN will be paid for the fire call."*

Traditionally, members are able to respond in their vehicles if immediate assistance is required on the fireground and there is no appliance available. Consistent with our past instructions, members should not 'follow on'. Today your Executive and the Retained Executive met and discussed if this should be changed in light of the current extreme circumstances.

We reaffirmed that as professional firefighters, we should not be driving private vehicles under normal road conditions to emergencies.

Some of the reasons that this practise should be avoided are the unnecessary risk to yourself and others, such as:

- Transporting potentially carcinogen-contaminated PPE in your private vehicle;
- Delayed response in driving your private vehicle under normal road conditions (if you can even get to the emergency) diminishes our 'emergency response' capacity;
- Potentially inadvertently contaminating your family vehicle with COVID-19;
- Having numerous private vehicles at an emergency scene adds hazards to a scene we all have to work around- as will any other emergency services workers and civilians.

The FBEU recommends the following process for minimising COVID-19 risk to retained members instead.



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## Retained Platoons

1. Each station should break up into two clearly defined platoons. If possible split, Captains and Deputies evenly onto each platoon. Each platoon should minimise 'new' contact- for example, members of the the same household or those in the same primary physical workplace should be put on the same platoon where possible.
2. At mixed stations, Platoons shall if possible align to permanent rosters. This is to help minimise contact with multiple crews unnecessarily (so Retained Platoon A should where possible only turn out with Permanent A and C platoons, and Retained Platoon B should where possible only turn out with Permanent B and D platoons.
3. Availability should be provided by 1800 hrs the previous day.
4. As a result of the smaller number of available members and given that the Department are now paying for attendance based on availability on GARTAN, it is important that you keep your availability as up to date and accurate as possible.

## Key points

- The purpose of this system is to limit firefighter-to-firefighter transmission of COVID-19, and reduce community spread.
- This can be done by restricting the number of firefighters we interact with as part of our work by limiting our interactions to our platoons.
- Assigning to platoons which align with Permanent shifts means being able to reduce the possibility of cross contamination between stations and staffing on different days.
- Having the same Duty Commander (in metro areas) dealing with same crews, allows Senior Officers and other members to become familiar with any local command issues that may arise.
- Shortages, if any, would come from the same 'pool' of staff, reducing possible cross-transmission of platoons, both Permanent and Retained.
- With increased availability of Retained Staff due to other employers closing, shutting down if a station platoon gets taken offline, there should be enough surplus staff (on the same platoon) to move about to keep a station online after decontamination etc.
- The Department's proposal (excepting two on the truck with others following on) will work with this structure and is a reasonable proposal regarding payment and compliance with availability and non-availability.
- We will review these arrangements on a weekly basis to see if this needs to be adjusted.
- If this arrangement is not working in your location after a week, please contact your station delegate if you have elected one, the Retained Sub Branch Secretary, and/or Junior Vice President to discuss. We will then consider other arrangements together with Local Zone Command emphasis on reducing exposures.

If a retained station cannot separate crews in at least two groups, then we say you minimise crew contact by running a 'station full' model. This means:

1. the first four members arriving at the station attend the call.
2. If a fifth member arrives then they shall attend the watch room, and inform any other members arriving to not enter the station, and update them as to if they are required by monitoring the call or liaising with the IC.



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## COVID-19 update

There are several outstanding matters that the Union is painstakingly working to resolve with FRNSW. Your Union and the Department have differing views on a number of issues and are attempting to work through those. We want to make sure the Department is fulfilling its obligations to us by ensuring that exposure to the virus is as limited as possible.

The Department has a duty of care to each of us and your Union is making sure that this is its first priority when determining policy during this pandemic.

We have received a number of calls from distressed members who have had their flights cancelled who have no way to get to work except to drive upwards of 10 hours to their base station. Whilst we gather further clarification about what these members should be doing, we are encouraging all members who find themselves in this situation to contact our office and/or their State Committee official, as well as alerting their local (to their home) command. The Department have said it is reviewing these circumstances on a 'case-by-case' basis and appear to be only approving requests to work at a station not your base that have "extraordinary" circumstances.

We first raised this issue with the Department some weeks ago, and we have still not been told the parameters it is using to determine what constitutes an 'extraordinary circumstance'. The confusing messages from the Berejiklian and Morrison Governments have certainly not helped either- schools are not closed but attendance is down by 90%, all workers are essential but only some should go to work. Please call or email us if your travel to work is affected in this way.

While we have a working relationship with the Department about most matters concerning COVID-19, it has not been forthcoming on the issue of alternative arrangements and we welcome your call or email telling us about your circumstances. We will work to resolve it together.

## Northern Rivers Decision

A Decision in our the Northern Rivers dispute was handed down on 23 March 2020. This was a unanimous decision (3-0) from the NSW Court of Appeal about whether firefighters should be paid overtime for the whole period of multiday intrastate deployment or whether once they are directed to cease work (at the end of the day for example) they have the right to continue to be paid overtime while they are still on deployment.

### History of the Decision

In 2017 during the Lismore Floods, firefighters were deployed for a number of days and were housed in tents. In the evening they were directed not to work. The Union at the time decided that the Award did not allow for firefighters not to be paid overtime when they ceased work under those circumstances and decided to pursue an underpayment claim.

The decision to prosecute directed the matter to the local court before the Chief Industrial Magistrate instead of the Industrial Relations Commission (which can deal with individual underpayments of up to \$10,000). The magistrate decided against us, so we appealed to the Supreme Court. We won that decision and the Department then decided to appeal to the NSW Court of Appeal, where we lost on 23 March 2020.



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The Appeal court decided that because the time on an intrastate deployment is overtime and overtime is at the discretion of the employer, then the Department can dismiss a firefighter from duty and not pay them.

This decision combined with the historical ambiguity in the Award means firefighters can be stood down, and not paid, when on intrastate deployments, but we do not know the circumstances of when and how firefighters can be stood down on intrastate deployments.

The decision to appeal the decision of the Chief Industrial Magistrate at the first stage was not without risks. It put the matter into a costs jurisdiction, this means that the loser party pays the winner's costs. This is the case for this appeal and the Union will have to pay for the legal costs of the Department.

You can find the decision here:

<https://www.caselaw.nsw.gov.au/decision/5e72e3b9e4b096e236c21839>

## Update on 08-22 dispute

The 08-22 dispute hearing has been adjourned until 22 June 2020. The Industrial Relations Commission has responded to the COVID-19 threat by closing the registry and only allowing for appearances by telephone.

Our dispute was listed for hearing on 30 March 2020. We were going to require the cross examination of the Department's witnesses as part of this hearing. As we cannot conduct cross examination in person, the Union and the Department both requested that the dispute be adjourned until it was safe to attend the Commission in person.

In the meantime we are negotiating in good faith with FRNSW to see if 08-22/19-20 dispute can be settled.

## 2020 Awards update

As reported in SitRep 14, we offered the Department one last opportunity to change its position and agree to our claim to backdate members' 2.5% wage increase to 17 February 2020. Since then we received the Department's response and unfortunately they continue to take a contrary position, seeking to delay your 2.5% wage increase. We are scheduled to report back to the Acting Chief Commissioner of the Industrial Relations Commission on Thursday 2 April 2020 (via telephone).

Your Union will seek that any outstanding matters be addressed and determined by the Commission during these proceedings. We will provide a further update after 2 April 2020.

In Unity,

Leighton Drury  
State Secretary