

Before the IRC NSW

No. IRC 254513 of 2020



For the purposes of conciliation only

INTERVENER SUBMISSIONS IN REPLY

1. NSWA's submissions are unpersuasive and merely seek to muddy the waters rather than draw the IRC's attention to evidence that the recommendation sought is unnecessary or would adversely impact the operations of the Ambulance Services.
 - a. In muddying the waters, at paragraph 21 of NSWA's submissions, it's suggested that the data spread found in **HSU-1** is not significant while providing near zero assistance to the parties and IRC in the provision of data around deployment levels, and the propensity for staff to be provided with Award conditions such as crib breaks and protections from unreasonable overtime.
 - b. At other times in NSWA's submissions, such as at paragraph 23 (a), the employer argues that Extension Of Shift Overtime (EOSOT), arises out of the 'unpredictability of ambulance work' rather than a lack of deployed crews.
 - c. At paragraph 9 of NSWA's submissions, the respondent audaciously proposes an even newer deployment model that appears likely to be as ambiguous and unenforceable as previous models.
2. HSU argues that our data, found at **HSU-1** does show a significant correlation between deployments against roster outputs and the propensity for members to be provided with their award rights such as crib breaks and protection from unreasonable overtime.
3. In any event, the employer has had ample opportunity over the years of related disputes to bring evidence, that it alone holds, to the table that shows that cribs and EOSOT have no relationship to supply and demand, that is, the number of deployed ambulances compared to the amount of triple zero jobs. It defies logic to suggest that there is no relationship.
4. In making a decision to support the HSU's Recommendation found at 16-19 of HSU's submissions, the IRC must weigh up the applicant, and intervener's arguments, and consider the impact, if any, on the respondent's operations, including if making the recommendation sought would adversely impact on the productivity and costs of the employer.
5. NSWA has made no submissions that go to costs.
6. We submit that the employer's funded core roster (PAR) outputs are insufficient to meet triple zero demand and for the Ambulance Service to fulfill its obligations set by government.
7. NSWA's metropolitan response area is often at 'Status 1' or 'Status 2' and hit 'Status 3' on Monday 26 April. Status 2 requires NSWA to deploy Educators and Managers to meet demand. Status 3 requires NSWA to send this chilling message to Government: 'Code Black/ Unable to respond to critically ill and injured triple zero patients'.

Sector Management

- Continue Status 1 & 2 actions
 - In discussing operational conditions with the LHD executives, the following terms should be used – “Code Black” / “Unable to respond to critically ill and injured triple zero patients”
 - Provide updates and advice to State IMT
8. The propensity for NSW to go ‘into status’ means that NSW’s objection to a requirement to ensure all rostered outputs are filled on a daily basis is a moot point on most days – the employer’s own policies remove the use of discretion when deciding to leave core rosters unfilled.
 9. On other, non ‘status’ days, the employer’s discretion should be restricted for the reasons outlined in HSU’s submissions and the admission that Ambulance work is unpredictable – 23 (a) of NSW’s submission.
 10. We do not dispute that Ambulance work is unpredictable.
 11. The unpredictable nature of ambulance work makes it difficult to accept that NSW can reasonably apply discretion when deciding to leave roster outputs unfilled.
 12. It has an obligation under the WHS Act, to identify hazards, assess and control associated risks to an acceptable level.
 13. It is accepted that crib breaks are a control to the risks associated with fatigue.
 14. NSW’s admission that ambulance work is unpredictable means it is difficult to forecast with a reasonable degree of accuracy a day where reduced demand for ambulance services will allow for roster vacancies to remain safely unfilled.
 15. It can not be held that the employer is fulfilling its WHS, Primary Duty of Care (s19 of the WHS Act) obligations during shifts where it has intentionally left funded roster outputs unfilled in an unpredictable demand environment.
 16. The matter of the maintenance of rosters has been disputed between the parties for many years, often requiring the patient assistance of the IRC.
 17. Such a reliance on the IRC’s services is often symptomatic of ambiguous policies, procedures, and in this case, deployment models.
 18. We do not accept the respondent’s suggestion to move to yet another proposed model that itself looks unintelligible and likely to lead to several more years of disputation.

Conclusion

19. The employer has a WHS and Award responsibility to provide crib breaks and unreasonable EOSOT.
20. The employer will not be adversely affected by the HSU’s sought recommendation.

21. HSU's recommendation is clear and unambiguous, that is, all station based funded rosters are to be filled each shift.

22. On that basis, in the interests of paramedic safety, the IRC should make the recommendation sought.

Stuart Hatter

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HSU

6 May 2021