



INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES
Industrial Relations Act 1996

CORAM: STANTON, C

20 December 2017

Matter No. 364021 of 2017

Notification under section 130 by New South Wales Nurses and Midwives' Association (the Association) of a dispute with Northern Sydney Local Health District (NSLHD) re-non-compliance of staffing award arrangements provisions by Northern Sydney Local Health District – Hornsby-Ku-Ring-Gai Hospital

RECOMMENDATION

- 1 This matter was subject to compulsory conference proceedings on 12 and 18 December 2017.

- 2 The dispute concerns nursing hours per patient day (NHPPD) and the requirement of NSLHD to comply with the provisions of Clause 53 of the *Public Health System Nurses and Midwives' (State) Award* (the Award). Arising from those proceedings, the Commission makes the following Recommendation.
 - (1) NSLHD shall write to all Nurse Unit Managers, Nurse Managers and Hospital Management at Hornsby-Ku-Ring-Gai Hospital indicating to them that they are to comply with the staffing provisions of Clause 53 the Award.

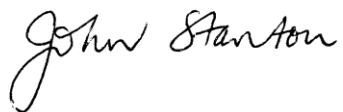
 - (2) NSLHD shall communicate with and instruct Nurse Unit Managers, Nurse Managers and Hospital Management that budgetary concerns should never override the legal requirement for award compliance.

- (3) Importantly, NSLHD shall inform Nurse Unit Managers, Nurse Managers and Hospital Management that the relevant 5.0, 5.5 or 6.0 NHPPD is the **minimum** number of hours possible in NHPPD wards and that there may be occasions where patient need will require additional staffing.
- (4) No Manager shall make a direction that breaches the NHPPD.
- (5) The correspondence referred to in paragraph 1 above shall be agreed upon by the Association before it is sent to Hornsby-Ku-Ring-Gai Hospital Management. The parties shall confer regarding the correspondence. Further, NSLHD shall meet with Nurse Unit Managers, Nurse Managers and Hospital Management to discuss and where necessary, clarify the intent of the correspondence.
- (6) NSLHD shall undertake spot checks in NHPPD wards for a further three months until the end of the week commencing 12 March 2018.
- (7) NSLHD shall assess all requests from part-time employees seeking increased contracted hours in accordance with Clause 29 Part 1 (xii) and subsequently commence a casual conversion process in accordance with Clause 29 Part I I(B) of the Award.
- (8) NSLHD shall review the base permanent hours allocated and review annual leave relief with a view to examining whether further permanent employment is required. NSLHD shall undertake to report its findings back to the Commission. NSLHD will fast track current recruitment to Hornsby-Ku-Ring-Gai Hospital.
- (9) The Association shall confer with the Ministry of Health regarding clause 53(iv) Section 1 (Replacement of Absences) and will report back to NSLHD and the Industrial Relations Commission.

- (10) NSLHD shall agree and accept Clause 53 Section 1(c) of the Award with respect to the default position of “backfilling the absence of nurses at the same classification”. Only when all avenues to backfill the absence with a nurse at the same classification level are exhausted (including overtime and agency staff) can the option to backfill the absence with a nurse of a lower classification be considered.
- (11) NSLHD shall agree and accepts that in NHPPD units, when the Nurse Unit Manager (or in-charge of shift) considers that patient care needs cannot be sufficiently met from the nurses immediately available, the Nurse Unit Manager and Nurse Managers will together consider and where possible implement solutions in accordance with clause 53(iv) Section II(r). Policies and practices of NSLHD which are inconsistent or contrary to clause 53(iv) Section II (r) such as policies dictating particular staffing solutions or constraints (such as for ‘specials’) or requiring authorisation beyond the Nurse Manager for the implementation of solutions (other than bed closures) will be changed so that they comply with the award provisions.
- (12) NSLHD shall not seek to replace direct clinical nursing absences with non-direct nursing staff, except in extra-ordinary circumstances.
- (13) NSLHD shall provide the Association (by email) and post for staff in non-NHPPD wards and units their weekly staffing levels for the 3 month period until the week commencing 12 March 2018.
- (14) It is the intention of the parties that nurses obtain a reasonable workload. NSLHD agree that during the transition period (3 months) towards award compliance with clause 53, NSLHD will not unreasonably require nursing staff to perform overtime solely in order to meet the NHPPD staffing levels. The Association accepts that during this transition period (whilst additional recruitment of nursing staffing occurs) some level of non-compliance may occur and whilst regrettable is only for a transitional period whilst more staff are being employed.

(15) NSLHD shall review all disciplinary matters on a case by case basis and consider the implications of understaffing on that particular disciplinary matter with respect to whether any warnings or the like should be withdrawn.

3 The matter is listed for further conference proceedings by teleconference on 1 February 2018 at 10am with liberty to apply for either party to have the matter relisted at short notice.

A handwritten signature in black ink that reads "John Stanton". The signature is written in a cursive style with a large initial 'J'.

J D Stanton

Commissioner