



## Waiting for the Great Leap... Backward?

*Firefighters won the 40 hour working week on 4 April 1955 and later fought for and won the introduction of the 38 hour working week on 7 June 1985. With the exception of Recruit Firefighters, all employees covered by the recently ratified Crown Employees (NSW Fire Brigades Firefighting Staff) Award 2000 have now returned to a 40 hour working week. So what's the deal here?*

Operational Firefighters work an average of 42 hours per week by virtue of the roster which requires each employee to work 336 hours every 8 weeks. The introduction of the 42 hour week allocated 38 of these hours as 'ordinary hours', 2 hours were accrued as 38 Hour Leave (and subsequently accessed by members in the Annual Leave Roster) and the final 2 hours were classed as roster overtime and were paid at 1.875 (one and seven-eighths) times a member's hourly rate.

Following the introduction of a 38 hour week, a firefighter's weekly rate of pay could be broken down into two components; Rate of Pay and 10/14 Roster Overtime. Prior to the introduction of the new Award effective from 24 February 2000, a senior firefighter received a Rate of Pay of \$774.50 per week and 10/14 Roster Overtime of \$76.43 which results in a Total Weekly Rate of \$850.93 per week.

Superannuation legislation as it stands does not recognise 10/14 Roster Overtime as Ordinary Time Earnings and did not therefore attract contributions from the employer. This is despite the fact that members are neither able to identify the two hours of supposed overtime, nor are they able to elect not to work these additional two hours in any given week.

Therefore, a SF member prior to the introduction of the 2000 Award would earn \$44,400 per annum, but the Department would only make superannuation contributions based upon approximately \$40,412 per annum because the legislation did not recognise the \$3,988 of 10/14 Roster Overtime as part of the member's Ordinary Time Earnings.

The Union flagged from the beginning of the Award negotiations its intention to include the 10/14 Roster Overtime component in every member's

superable salary. The Government raised the legislative barriers but gave a commitment to "look into it". After some months and presumably teams of experts researching and reviewing the matter, the Government informed the Union that, regrettably, there was no possible way of including 10/14 Roster Overtime in the Ordinary Time Earnings of members.

The Union then raised the concept of turning the 10/14 Roster Overtime component into Ordinary Time Earnings by deeming the extra two hours to be ordinary hours, and by converting the residual balance into an allowance which is payable for all purposes. The following is a paper which was prepared by the Union to assist the Industrial Relations Commission in understanding the proposed changes:

### **Crown Employees (NSW Fire Brigades Firefighting Staff) Award 2000** **Explanation of Proposed Changes**

*The following explanation relates to all classifications in the Award from and including Firefighter Level 1 to Inspector.*

*The 10/14 Roster requires employees to work 336 hours in an 8 week cycle. This means that employees work an average of 42 hours per week.*

*In order to give members access to a 38 hour week, it was deemed that the two hours worked above 40 hours would be considered to be Rostered Overtime and was paid at the rate of 1.875 (one and seven-eighths) of the employees' hourly rate. The net result being that employees were effectively paid a premium of 1.75 (one and three-quarters) of their normal hourly rate.*

*The two hours between 38 and 40 hours was considered to be 38 hour leave and was received by members in the form of additional leave in their rostered annual leave groups and a residual balance of 7.25 hours per annum which was credited to each employee by way of consolidated leave.*

*The problem that then faced employees was that a significant portion of their Total Weekly Rate was not attracting superannuation contributions by virtue of it being called overtime. Despite the fact that members could neither*

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identify which two hours in a particular week were overtime nor could they opt out of working such "overtime", the construction of superannuation schemes continue to disallow contributions based upon this component of pay.

In order to rectify this problem, the Union and the Department have agreed to vary the "Ordinary Hours of Work" to be 40 hours per week on average. In doing so, employees are not required to actually work any more hours than they did under the 1997 Award, nor do they lose any entitlement to leave.

The transition to an average working week of 40 ordinary hours has been accomplished by taking each classification's Rate of Pay and dividing it by 38 to identify the hourly rate and then multiplying by 40. This then removes the need to calculate an amount for roster overtime as it no longer exists. In order to bridge the gap that exists in the Total Weekly Rate which is equivalent to the effective premium of 1.75 times the hourly rate, the parties have agreed to introduce a weekly roster allowance which is payable for all purposes and the quantum of which is 1.75 times the hourly rate of each classification. For example:

A Qualified Firefighter's current weekly rates of pay are as follows:

Rate of Pay: \$744.70 Roster Overtime: \$73.50 Total Weekly Rate: \$818.20 (ie. \$744.70 + \$73.50)  
Hourly Rate of Pay: \$19.60 (ie. \$744.70 divided by 38)

Assuming a 3% increase with no change to ordinary hours:

If we assume that the ordinary hours of work remained the same, an increase of 3% would deliver the following result:

Rate of Pay: \$767.04 Roster Overtime: \$75.69 Total Weekly Rate: \$842.73 (ie. \$767.04 + \$75.69)  
Hourly Rate of Pay: \$20.19 (ie. \$767.04 divided by 38)

#### Under Proposed Award

Under the terms of the proposed Award, the current figure for the Rate of Pay of a QFF is increased by 3% and divided by 38 and then multiplied by 40 to arrive at the new weekly rate of pay of \$807.42. When reduced to an unrounded hourly rate and multiplied by 1.75 a roster allowance of \$35.32 is obtained. This produces the following weekly figures:

Rate of Pay: \$807.42 Roster Allowance: \$35.32 Total Weekly Rate: \$842.74 (ie. \$807.42 + \$35.32)  
Hourly Rate of Pay: \$20.19 (ie. \$807.42 divided by 40 hours)

NB: The 1 cent variance in the Total Weekly Rates (ie. \$842.73 v. \$842.74) is due to the cumulative effects of rounding, etc. but has no effect on the hourly rate of pay.

Therefore, the net Benefit to QFF members is that an amount of \$75.69 per week which would not have attracted superannuation contributions from the employer will now attract such contributions. There is no impact upon the actual number of hours worked by the employee nor the cost of casual overtime to the Department as the hourly rate remains unchanged.

#### Explanation of the Roster Allowance

The Roster Allowance is an allowance which will be payable for all purposes and which is set at the level of 1.75 times the unrounded hourly rate of pay of employees. It is calculated by dividing the weekly rate by 40 and multiplying the result by 1.75 and then rounding the figure to the nearest cent. Its inclusion in the Total Weekly Rate does not, in any way, increase the quantum of an employees' hourly rate of pay.

#### Annual Leave

The parties agree that the change to ordinary hours should not have either a positive or negative impact upon the quantum of annual leave currently being received by employees in a given year. To this end, the parties accept that Clause 17 - Annual Leave may require an amendment to reflect this commitment and have included it in the Leave Reserved Clause. Employees shall continue to take leave in accordance with the established and agreed annual leave roster.

#### Conclusion

In short, the classifications affected by the change will benefit greatly from increased superannuation contributions without having to actually work any additional hours. Employees' leave entitlements remain unaffected, as do the hourly rates of pay and the cost to the Department of casual overtime. Similarly, the roster allowance ensures that employees do not suffer any loss in their Total Weekly Rate.



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*It is the view of the parties that the proposed changes satisfy both section 22(1) of the New South Wales Industrial Relations Act 1996, and the current wage fixing principles as established in the 1999 State Wage Case.*

The Department estimated the cost of the higher contributions to be somewhere in the vicinity of \$1.9M per annum. Once the Union had identified the way around the legislative barriers that the Department and the Government were unable to identify, the Department then claimed that the full \$1.9M needed to be offset somehow.

The first solution advanced by the Department was to reduce the quantum of the overall increases from 17 % to 16%. This suggestion was rejected outright by the Union and so the Department floated a number of issues in an effort to attempt to realise the required cost offset. Among these suggestions was the issue of the O2BA allowance. The total expenditure on O2BA allowances was somewhere between \$400k - \$450k per annum.

Given that the O2BA equipment was no longer in service, the Union's officials were abundantly aware of the fact that the expenditure on O2BA would diminish over time as no new operators would be trained and the equipment had long since been removed from service. Therefore, this was an allowance that would ultimately be worth nothing to members in terms of industrial leverage. Whilst the Union had previously ensured that members holding the qualification would not lose the allowance (\$10.91 per week) as it was fully superable, the inclusion of the 10/14 Roster Overtime component of pay delivered a far superior result in terms of superable salary. It was on this basis that the Union agreed to trade off the allowance for now-redundant equipment in return for a superior superannuation benefit for all members. Effectively the

Union gained \$1.9M worth of value for approximately \$450k.

By way of example, we can see that (even before the 3% pay increase) a Senior Firefighter member is 7 times better off in terms of the employer contributions received on the roster O/T as compared with merely the O2BA (ie.  $\$10.91/\$76.43 = 7.005$ ). When one considers too that the 3% increase (\$25.53 pw for a Senior FF) more than adequately offsets both the loss of the O2BA allowance and any additional employee super contributions, it is difficult to suggest that any member was disadvantaged by the Award changes.

### But what about the Recruits?

The Union sought to have Recruit Firefighters moved to a 40 hour week and thereby attract the Roster Allowance and an additional two hours pay. In its correspondence of 20 April 2000, the Union stated:

"The Brigades will note that the proposed permanent Awards include a provision to include a roster allowance for Recruit Firefighters and to move them to a 40 hour week in line with all other classifications covered by the proposed Awards. This is proposed primarily for the purpose of maintaining consistency and utility within the new Awards and significantly, has been achieved not by increasing the actual number of hours worked, but by removing the accrual of 38 Hour Leave whilst Recruits are at the college (see clauses 8.8 & 8.10).

The Union contends that, through the savings realised by the Brigades in the interface between the Recruits leaving the training college and their first Annual Leave groups, such a move is effectively cost neutral. However,

should the Brigades not agree to this particular concept then the Union would reluctantly revert to the position whereby the Recruit Firefighter rates remain based upon a 38 hour week and are indexed in accordance with the general wage movements for the life of the Award."

The Department refused to accept the Union's position in this respect and so it is that Recruit Firefighters remain on a 38 hour week (whereby they actually work 40 hours per week and 2 hours is accrued as leave).

### And the Supers and Chief Supers?

Members may recall that the 1997 Award contained a commitment to conduct a joint review of the hours worked by Supers and Chief Supers. Following the conclusion of the survey and numerous episodes before the Industrial Relations Commission, these members gained an entitlement to claim two hours per week additional to the 38 ordinary hours specified by the Award. In line with this determination, the 2000 Award was varied to the extent that these members also moved to a working week of 40 ordinary hours.

### So did Firefighters go Backward or Forward?

Quite simply the answer is that, whilst appearing to take a small step backward, NSW Firefighters actually took a significant leap forward. In reality members do not work any different hours to when they technically had a 38 hour week. The real difference is that members collectively gained what currently amounts to \$1.9M per annum in additional superannuation contributions.