

Annexure “B”

Notification to the Industrial Registrar of Industrial Dispute pursuant to
section 132 dated 26 July 2012

Form 4
Notification to Industrial Registrar of Industrial Dispute Pursuant to section 132

Note: (1) This form sets out the minimum information required by a Notification of an Industrial Dispute. You need not follow the form set out below, but you **MUST** give the information required by this form.

(2) This notification may, but need not, be in the form required by Form A of Schedule 1. It may also be given in the form of a letter (preferably on letterhead identifying the notifier).

(3) Rule 27 allows Notifications to be given to the Registrar in a variety of ways. Where the Notification is not given in writing, however, you are required to confirm the Notification in writing as soon as possible.

(4) You need to serve a copy of the notification (or its confirmation) on the other parties to the dispute.

(5) Part 5 of the Industrial Commission Rules (Rules 24 to 29) deals with Dispute notifications, and you should refer to those Rules.

1. Name: Fire Brigade Employees' Union (FBEU)
2. Address: 1 – 7 Belmore Street Surry Hills, NSW 2010
3. Capacity of notifier: Industrial Organisation
4. The question, dispute or difficulty concerns the following industrial matters:
 - a) This dispute relates to the safe and effective minimum crewing firefighters responding to incidents and the staffing of fire stations.
 - b) The Department proposes to introduce a new policy for managing firefighter crewing levels that will no longer maintain safe and effective minimum crews. A copy of the Department's correspondence, including the new policy is attached and marked A.
 - c) The existing policy, which resulted from a decision of the Full Bench in *Crown Employees (NSW Fire Brigades Permanent Firefighting Staff) Award 2008 and another [2008] NSWIRComm 174*, is attached and marked B. The decision is also attached and marked C.
 - d) The Department's proposal in its current form presents a potential threat to firefighter safety and given it is an employee related cost saving, in accordance with the NSW Public Sector Wages Policy 2011, it should be the subject of Award negotiations in any event.
 - e) The Union understands that the Department intends to implement the new policy as soon as possible and therefore seeks that matter be listed urgently.
5. The award, agreement or determination that applies to the employees, etc is: Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011 and the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011
6. The person to contact on behalf of the notifier is:

Gemma Lawrence
Senior Industrial Officer
1 – 7 Belmore Street
Surry Hills, 2010
9218 3444

7. The other persons affected by or involved in this question, dispute or difficulty are:

Bernard King
Assistant Director Employee Relations
NSW Fire Brigades
227 Castlereagh Street
Sydney 2000

Dated: 26 July 2012

Signed:



Notifier

To the Industrial Registrar,
Sydney.

(A)



File Ref. No: NFB/03050
TRIM Ref. No: D12/9525

20 July 2012

Mr Jim Casey
State Secretary
Fire Brigade Employees' Union
1-7 Belmore Street
SURRY HILLS NSW 2010

Dear Mr Casey

Temporary Off Line Policy

Further to my letter of 17 July 2012 and previous discussions, I am specifically writing in relation to Temporary Off Line (TOL) arrangements. I reinforce that it is FRNSW's objective to maximise firefighter attendance, thereby reducing the need to TOL or to incur overtime.

The attached revised instruction provides guidance to personnel on how the TOL process is to be implemented, without being too prescriptive.

Specific changes to the existing TOL policy (In-Order 2008/22) include:

- Inclusion of permanent stations/appliances in the TOL process.
- Use of permanent and retained appliances for move ups.
- Use of retained firefighters to supplement permanent crewing at mixed stations.
- Exclusion of specific list of stations / appliances to be TOL'ed.

Given the requirement to immediately implement savings, I would welcome your comments on the attached revised policy as soon as possible. If you would like to discuss the policy both Deputy Commissioner Jim Smith and Assistant Commissioner Jim Hamilton are available to meet at 0900 hours on Monday 23 July 2012.

Yours sincerely

A handwritten signature in black ink, appearing to read "G. Mullins".

Greg Mullins AFSM
Commissioner

Fire & Rescue NSW
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Permanent and Retained firefighter crewing levels

This instruction rescinds In Orders 2008/22, *Retained firefighter response coverage and crewing levels*

1. Background

It is important for Fire & Rescue NSW to ensure arrival of the first appliance at an emergency scene as soon as possible. Some locations with more than one fire station or fire appliance may have increased response coverage. This can be valuable in providing a surge capacity during major incidents and on days of extreme fire danger. However, supplementing crewing through overtime and other means at all times at a number of identified fire stations, is considered unnecessary in terms of day-to-day response coverage and risk management.

2. Staffing policy

It is the responsibility of the Director Metropolitan Operations, Director Regional Operations and each Area Commander to ensure appropriate staffing levels and to provide guidance on how to maintain levels in the event of shortages.

Station Commanders are to monitor staffing levels ensuring that urban fire appliances (Class 3, Class 2 and Aerial Pumps) have a safe and effective minimum crew of four firefighters and in the case of specialist appliances, eg. Heavy Hazmat, or support appliances eg Tankers and Hazmat Vans, two firefighters are available to respond to calls.

When it is known that the required staffing level is not available the relevant Duty Commander is to be immediately notified.

The Duty Commander, in consultation as required with the Zone and Area Commander, will determine what action is to be taken in relation to the identified staff shortage.

In the case of a Retained Station:

1. The Station Commander is to contact all retained firefighters attached to the station to advise of the staffing deficiency in an attempt to manage the situation locally.
2. In the event that sufficient retained staff cannot be raised the Station Commander will contact the Duty Commander who will identify whether surplus retained firefighters from an adjoining station, or retained firefighters from other Brigades working in the station area, are able and willing to respond with that station. Retained firefighters who agree to respond with another brigade will not be disadvantaged for doing so. In the event that a firefighter's own brigade attends more calls than the alternative brigade, then the firefighter will be recognised (both in terms of pay and attendances) as having responded with their own brigade.

3. In the event that sufficient retained staff cannot be raised the Duty Commander will then determine if the station / appliance are to be "Temporarily Taken Off Line (TOL)" or kept on line.
4. If the station / appliance is to be kept on line the Duty Commander will arrange for a move up of another appliance or crew supplementation via the use of available on shift permanent firefighters, or the use of either an off shift permanent or retained firefighter, which ever is the most cost effective to fill the vacancy. Consideration should be given to length of vacancy, location, travel time and kilometres in making this decision.
5. If the station is to be TOL the Station Commander and Communication Centre are to be immediately advised and the station/appliance will remain temporarily off line until full crewing is again available. Pagers will continue to be activated and retained firefighters who respond to the station in response to a call when insufficient crew is available may respond in the appliance upon achieving a minimum crew of two. Stations responding in this way must not engage in offensive firefighting operations at a structure fire or hazmat incident, or commit personnel in SCBA, until another appliance has arrived on scene.

Where it is known that four retained firefighters from the station are available to attend a call then the urban pumper may respond upon achieving a minimum crew of two. However, stations responding in this way must not engage in offensive firefighting operations at a structure fire or hazmat incident, or commit personnel in SCBA, before at least four firefighters have arrived on scene.

In the case of Mixed Stations (Permanent and Retained Crewing):

In the event that minimum permanent staffing cannot be met, and the station appliance is to be kept on line the Duty Commander will take the following actions:

1. Identify if on shift staff from adjoining stations can be used
2. If staff from adjoining stations are not available and there is a single vacancy arrange for a Retained firefighter to be available on call to supplement the staffing. The appliance will respond on arrival of first Retained firefighter at the station.
3. Arrange for the move up of another appliance
4. Use available off duty firefighters

If the station/appliance is to be TOL the Duty Commander will immediately notify the Communications Centre and the Station Commander.

In the case of Permanent Stations

In the event that minimum staffing cannot be met, and the station/appliance is to be kept on line the Duty Commander will take the following actions:

1. Identify if on shift staff from adjoining stations can be used
2. Arrange for the move up of another appliance
3. Use available off duty firefighters

If the station/appliance is to be TOL the Duty Commander will immediately notify the Communications Centre and the Station Commander

*Contact Officer: Assistant Commissioner Jim Hamilton, Director Greater
Metropolitan Operations, (02) 9265 2701*

File Reference: CHO/09370 and NFB/03050

Documentation including pro-forma letters for monitoring and remedial programs pursuant to sub-clause 28.3 of the Award is available from Zone Offices.

Contact Officer: Director Regional Operations, (02) 9265 2702

File Reference: NFB/03506

In Orders 2010/14, with amendments

Retained firefighter response coverage and crewing levels

This instruction results from a decision of a Full Bench of the Industrial Relations Commission.

1 Background

It is important for Fire and Rescue NSW to ensure arrival of the first appliance at an emergency scene as soon as possible. Some fire districts with more than one fire station may have increased response coverage. This can be valuable in providing a surge capacity during major incidents and on days of Extreme fire danger. However, supplementing crewing through overtime and other means at all times at a small number of identified retained fire stations listed in Section 4 below, and on Bravo pumpers, is considered unnecessary in terms of day-to-day response coverage and risk management.

2 Staffing policy

It is the duty of the Station Commander of a brigade to ensure that sufficient retained staff will be available at all times to ensure that a safe and effective minimum crew of four firefighters will respond to calls.

Where it is known that four retained firefighters from the station are available to answer a call then the pumper may respond upon achieving a minimum crew of two. However, stations responding in this way must not engage in offensive firefighting operations at a structure fire or hazmat incident, or commit personnel in SCBA, before at least four firefighters have arrived on scene.

3 Stations always requiring crew supplementation

Retained brigades that are not listed in Section 4 must maintain a safe and effective minimum crew of four firefighters for the station pumper at all times. Ancillary appliances such as water tankers (other than rescue or hazmat tankers, which must have a minimum crew of two available at all times) and additional pumpers at the station may be staffed if sufficient firefighters are available. However it is not necessary to staff such retained ancillary appliances at all times, subject to a risk assessment being undertaken.

Where insufficient staff are available, the following actions will be taken provided that the use of firefighters from other stations does not compromise safe and effective minimum staffing at those other stations:

- a. The officer in charge will immediately advise the ComCen, Duty Commander and Zone Commander, so that alternative response arrangements can be made while steps (b) to (g) below are taken to restore safe and effective minimum crewing levels at the station.
- b. The officer in charge will notify all retained firefighters attached to the station to advise of the staffing deficiency in an attempt to manage the situation locally.
- c. In the event that sufficient retained staff cannot be raised through step (b), the Duty Commander or Zone Commander will identify whether surplus retained firefighters from an adjoining station, or retained firefighters from other Brigades working in the station area, are able and willing to respond with that station.

- d. In the event that sufficient retained staff cannot be raised through step (c), the Duty Commander or Zone Commander will direct any surplus on-duty permanent staff at nearby stations to work at the station on out-duty or stand by.
- e. In the event that sufficient permanent staff cannot be raised through step (d), the Duty Commander or Zone Commander will identify the potential to move-up a retained Bravo appliance and crew from another fire station.
- f. In the event that a risk assessment precludes the use of a move-up through step (e), the Duty Commander or Zone Commander will arrange for the recall of off-duty permanent staff attached to base stations within 60 kilometres of the station in question.
- g. In the event that sufficient permanent staff cannot be raised through step (f), the Duty Commander or Zone Commander will arrange for surplus retained firefighters from another station or stations to stand-by at that station.

Retained firefighters who agree to respond with another brigade at step (c) will not be disadvantaged for doing so. In the event that a firefighter's own brigade attends more calls than the alternative brigade, then the firefighter will be recognised (both in terms of pay and attendances) as having responded with their own brigade.

4 Stations not requiring crew supplementation (subject to risk assessment)

Retained brigades in the identified locations where unavailability will not affect response times in the fire district (refer to list) will not automatically require crew supplementation except when a Total Fire Ban has been declared, there is a major incident in progress at which their station may be required, or other operational reasons determined by the Area Commander.

Should retained firefighter availability drop below four at stations listed in the schedule below, the ComCen is to be notified and, while appliances will be taken off-line temporarily until full crewing from within the station complement is again available, pagers will continue to be activated. Retained firefighters who respond to the station in response to a call when insufficient crew is available must not take the appliance, but may attend the incident to assist other attending brigades in their private vehicles.

Statewide

All Bravo pumpers

Sydney

48 Mortdale
79 Ingleburn
66 Rhodes
72 Merrylands
83 Riverstone

Newcastle/Central Coast

231 Boolaroo
252 Carrington
357 Lambton
376 Merewether
404 New Lambton
484 Wallsend
460 The Entrance

Illawarra

210 Balgownie
258 Coledale
269 Corrimal
461 Thirroul

Lower Hunter

202 Abermain *
220 Bellbird
344 Kearsley
349 Kurri Kurri *
382 Morpeth
455 Telarah
497 Weston *

Note: A safe and effective minimum crew of four firefighters must be maintained at no less than one of the three stations marked with an asterix (*) at all times.

Other areas

361 Leura
514 Tweed River
284 Delroy
206 Albury North
209 Albury Civic
480 Wagga Wagga
239 Broken Hill South
508 West Tamworth
105 Kelso
307 South Grafton
364 Lithgow West

Note: Adjoining fire stations, or a Bravo pumper and fire station in the same fire district, must not be taken off line at the same time.

Contact Officer: Director Greater Metropolitan Operations, (02) 9265 2701

File Reference: CHO/09370 and NFB/03050

In Orders 2008/22, with amendments

(C)



Industrial Relations Commission
of New South Wales

CITATION: Crown Employees (NSW Fire Brigades Permanent Firefighting Staff)
Award 2008 and another [2008] NSWIRComm 174

PARTIES: APPLICANT
New South Wales Fire Brigades Employees' Union

RESPONDENT
New South Wales Fire Brigades

FILE NUMBER(S): IRC 231; 722; 723; 85 of 2008

CORAM: Walton J Vice-President; Kavanagh J; Grayson DP

CATCHWORDS: Award - Applications for new enterprise awards for permanent and
retained firefighters - Salary and other variations sought - Government
wages policy - Counter claims - Claims for cost offsets and improvements
in efficiency made by Fire Brigades - Bluescope model -
Recommendations made - Awards made and reviewed

LEGISLATION CITED: Industrial Relations Act 1996

CASES CITED: Re Operational Ambulance Officers (State) Award and others [2008]
NSWIRComm 168
State Wage Case 2008 [2008] NSWIRComm 122

HEARING DATES: 25/8/08, 26/8/08, 27/8/08, 28/8/08, 29/8/08, 1/9/08, 2/09/08, 3/09/08,
16/09/08, 19/9/08

EXTEMPORE JUDGMENT DATE: 19 September 2008

LEGAL REPRESENTATIVES: APPLICANT
Mr J Nolan of counsel
Mr C Reid, New South Wales Fire Brigades Employees' Union

RESPONDENT
Mr P Kite SC with Mr A Britt of counsel
Ms C Ludlow, NSW Crown Solicitor's Office for New South Wales Fire
Brigades

JUDGMENT:

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

FULL BENCH

**CORAM: WALTON J, Vice-President
KAVANAGH J
GRAYSON DP**

Friday 19 September 2008

Matter No IRC 231 of 2008

**CROWN EMPLOYEES (NSW FIRE BRIGADES PERMANENT FIREFIGHTING STAFF) AWARD
2008**

Application by New South Wales Fire Brigade Employees' Union for a new award

Matter No IRC 722 of 2008

CROWN EMPLOYEES (NSW FIRE BRIGADES FIREFIGHTING STAFF) AWARD 2005

Notice of award review pursuant to section 19 of the Industrial Relations Act 1996

Matter No IRC 723 of 2008

CROWN EMPLOYEES (NSW FIRE BRIGADES RETAINED FIREFIGHTING STAFF) AWARD 2005

Notice of award review pursuant to section 19 of the Industrial Relations Act 1996

Matter No IRC 85 of 2008

**NOTIFICATION UNDER SECTION 130 BY NEW SOUTH WALES FIRE BRIGADES ON BEHALF OF
THE DIRECTOR OF PUBLIC EMPLOYMENT OF A DISPUTE WITH NEW SOUTH WALES FIRE
BRIGADE EMPLOYEES' UNION RE STOP WORK MEETING**

**DECISION OF THE COMMISSION
EX TEMPORE
[2008] NSWIRComm 174**

1 By applications filed on 21 February 2008, the New South Wales Fire Brigades Employees' Union sought the making of two new enterprise awards which would replace two existing awards known as the Crown Employees (NSW Fire Brigades Firefighting Staff) Award 2005 and the Crown Employees (NSW Fire Brigades Retained Firefighting Staff) Award 2005 ("the 2005 awards").

2 Those applications were subsequently amended by leave of the Commission and, on 11 April 2008, the Director of Public Employment on behalf of the New South Wales Fire Brigades filed counter award applications again seeking the making of new awards but in a different form as to rates and conditions in certain significant respects to those proposed in the Union's amended applications.

3 The 2005 awards were varied on 14 February 2008 by orders made by *Kavanagh J* in the dispute proceedings in Matter No IRC 85 of 2008. Those orders resulted in the making of two interim awards, each having the effect of adjusting the rates of pay in the 2005 awards by 2.5 percent. The interim awards operated from 24 February 2008.

4 In all, the amended applications and counter applications brought with them a substantial number of claims and counter claims, each heard as referred proceedings under the Special Case principle of the *State Wage Case 2008* [2008] NSWIRComm 122. It may be further observed that the proceedings went forward against a background

of an announcement by the New South Wales government of the Public Sector Wages Policy 2007. Having regard to those considerations, the proceedings were dealt with by the application of a procedure or methodology now known as the 'Bluescope Model'. We do not detail that process, as it is adequately described in the recent decision of a Full Bench of the Commission in *Re Operational Ambulance Officers (State) Award and others* [2008] NSWIRComm 168. The entirety of the proceedings were concluded (in terms of determinations as to the relevant issues) within the eight days the matters were listed for hearing.

5 The parties produced two new draft awards reflecting the outcome of agreements or recommendations made during the course of that process together with any adjustments arising from the related proceedings under s 19 of the *Industrial Relations Act* 1996. The first is to be known as the Crown Employees (NSW Fire Brigades Permanent Firefighting Staff) Award 2008, the terms of which are contained in exhibit 26 in the proceedings. The second award is to be known as the Crown Employees (NSW Fire Brigades Retained Firefighting Staff) Award 2008, in terms of exhibit 27 (as amended by exhibit 28 and the ruling of the Full Bench in relation to that document).

6 We do not propose in this decision to outline in detail the large number of recommendations which we made during the course of the hearing. It is sufficient for present purposes to refer to the wage adjustments we recommended, together with a record of changes to award and non-award matters, resulting in cost savings or other efficiencies. We shall also make some brief observations as to some of the matters that we have dealt with for the purposes of clarity.

7 The increases in salaries recommended are a reflection of the fact that the Union made out a special case. This conclusion also included a recognition that there had been changes in work value demonstrated which were sufficient to register attention under the wage fixing principles, but which may be described as 'modest'. The salary increases also represent the quite substantial improvements in efficiencies and cost outcomes which were agreed or recommended. The Commission recommended an adjustment over three approximate year periods consisting in the first part of a 4.6 percent adjustment to salaries then followed by two successive 4 percent adjustments. The operative dates for those variations are reflected in the proposed awards. The award and non-award matters, cost offsets or efficiencies and like improvements recommended or agreed are reflected in the attached document (which is the amended version of exhibit 30).

8 As we have mentioned, it is appropriate to make some points in clarification as to some of the areas attended to during the course of the proceedings. These are set out in summary form below.

1. Sick Leave

- The costings for this item are based on an agreed reduction to an average of 87 hours per permanent fire fighter per year.
- The policy is agreed in content and will be implemented with making of the award.
- Overtime savings have been a major contributor to the salary increases awarded.

2. Water Tankers

The salary increase associated with the implementation of Water Tankers is awarded on the basis of the drafted In-Order submitted during proceedings and the agreement of the parties to implement the change immediately following conclusion of proceedings.

3. Not back filling vacancies at 32 Retained Stations and Bravo Units state-wide when falling below minimum crewing

The salary increase associated with the implementation of the back filling is awarded on the basis of the drafted In-Order submitted during proceedings and the determination by the Commission that the proposal is reasonable, including the recognition by the NSW Fire Brigades of costs savings thus effected being taken into account in the salary increases proposed.

4. Operational Support / Executive Officers Arrangements

The parties have agreed to a number of changes as part of an overall arrangement as detailed below:

- Deletion of Operational Support Levels 4 & 5, and reversion of the position holders to their substantive ranks (Superintendents and Chief Superintendents respectively).
- 'Grandfathering' of Operational Support Level 4 (for current position holders as at day prior to commencement of new award) by maintenance of the payment to them of the current salary differential (without indexation) until they are promoted or leave the service.
- Part C Executive Officers to be rolled back into Part B - the main part of award. The NSW Fire Brigade Employees' Union undertakes that there will be no unintended consequences.
- It is acknowledged that there is no claim to on-call allowance for Executive Officers (past or future).
- Operational Support position holders are no longer required to spend 2 months at a fire station for promotion/progression purposes under Clause 13.
- An additional weeks' leave for Executive Officers (increase from 4 to 5 weeks).
- Increase in Inspectors relativity (to Qualified Firefighters) to 150%.
- The parties are to adopt the NSW Fire Brigades' proposed clause re cleaning of clothes (Clause 33 of NSW Fire Brigades' counter application).

It is agreed by the parties that these arrangements are cost neutral and there will be no costs savings claimed by either party.

5. Electronic Timesheets

The parties have agreed this is an efficiency, the value of which has been included in the wages award. The parties have agreed to implement the change immediately following conclusion of proceedings.

6. Sunsetting Allowance

The Full Bench determined that while the union's application that the sunsetting allowances be reinserted into the award was declined, the turntable ladders qualifications and rescue monitor (SIM) allowances will be indexed in line with any wage increases from the date of operation of this award (but not in respect of wage increases prior). The allowances will only apply to those who are still in receipt of these allowances as at the making of this award.

9 In all of these circumstances, we consider that the proposed awards in exhibits 26 and 27 (as amended) satisfy all the statutory requirements for making of awards, comply with the Wage Fixing principles and have an abundance of industrial merit. We intend to approve them, but in doing so also note that the awards exhaust work value considerations up to the commencement date of the award and have been reviewed for the purposes of s 19 of the Act. We also note the undertakings given by the Union.

10 We make the following awards:

1. Crown Employees (NSW Fire Brigades Permanent Firefighting Staff) Award 2008 in terms of exhibit 26, subject to a settlement of the Minutes before *Kavanagh J* at 9.30 am Monday 22 September 2008; and
2. Crown Employees (NSW Fire Brigades Retained Firefighting Staff) Award 2008 in terms of exhibit 27 as amended (the final form of that award shall be produced to *Kavanagh J* at the time of the settling of the Minutes in relation to exhibit 26).

11 The awards shall commence on and from 18 June 2008 and shall operate until 17 June 2011.

POSTSCRIPT

12 On 23 September 2008, *Kavanagh J* settled the terms of the abovementioned awards and, accordingly, made two new awards known as the 'Crown Employees (NSW Fire Brigades Permanent Firefighting Staff) Award 2008' and the 'Crown Employees (NSW Fire Brigades Retained Firefighting Staff) Award 2008'. The terms of

those awards are contained in a folder entitled 'Final Awards' (being the Final Version of the awards of 22 September 2008).

13 We also note that *Kavanagh J* made further Recommendations in relation to these matters (and a further dispute Matter No IRC 1791 of 2008) dated 20, 22 and 23 September 2008. One of those Recommendations resolved a question as to the date of operation of salary increases (the date of operation of the first pay increase being the first full pay period on or after 18 June 2008 with the adjustment being made by administrative action).



Attachment - Cost Offsets, Efficiencies & Improvements Summary.pdf

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Last updated 30 January 2009

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Cost Offsets/Efficiencies and Improvements Summary

Award Matters

1. Additional Gazetted Public Holidays (not including local public holidays)

Changes to the public holidays clause will ensure that only firefighters actually working on additional gazetted public holidays will receive consolidated leave for hours worked.

2. Sick leave Reform

The current clause has been amended and an absence management policy introduced to help reduce the incidence of sick leave. The NSWFB has nominated a targeted reduction from 107 hours per firefighter per year to 87 hours per firefighter per year and a review mechanism has been inserted into the award to ensure the target will be achieved. Where disciplinary sanctions may be applied as provided for in the new policy, the Full Bench has inserted a dispute mechanism for referral to the IRC.

3. Outduties limits to 12

The cap on outduties has been increased from 8 to 12 per year. This means firefighters can be directed to perform up to an additional four relief duties per year. This gives NSWFB additional flexibility in staffing arrangements which will assist in reducing overtime costs.

4. Deletion of leave in lieu

Certain provisions in the award enabled firefighters to elect to either receive overtime payment or leave in lieu. The option to take leave in lieu has been removed. The deletion means NSWFB will not need to replace the firefighter (when on leave) with another firefighter on overtime rates and reduces future leave liabilities for the organisation.

5. Relief duties outside Fire Districts

The Relieving clause has been amended to allow the NSWFB to direct, in addition to Inspectors, all Relievers to work outside their Fire District, and those officers who are residentially qualified on a transfer list for an area to perform relief in that area. This allows equitable and efficient use of any potentially spare staff.

6. Northern Rivers Transfer Register

A Northern Rivers Regional Transfer Register has been created recognising the tremendous growth potential of this area. This list consolidates four local government areas. This streamlines the transfer process for the Northern Rivers and gives NSWFB flexibility to move staff around within this area.

7. Organisational Change

An Organisational Change clause has been inserted into the Awards to deal with change in specified clauses in lieu of the requirement for agreement between the parties. The clause sets out the process for consultation to occur regarding the introduction of change in the nominated areas. This change will increase NSWFB's flexibility and operational efficiency thereby enhancing service delivery.

Non Award Matters

1. Water Tankers staffed on a Risk Management Basis

Historically in the bush fire danger period the NSWFB has had to staff water tankers on all occasions. This has meant that NSWFB has been required to fully staff water tankers even in times of inclement weather where the danger of bush fire is minimal. The parties have agreed (as set out in the draft in-order provided during proceedings) to allow the NSWFB to only staff water tankers when the circumstances require it.

2. Not back filling vacancies at 32 identified Retained Stations and Bravo Units state-wide when falling below minimum crewing

The NSWFB has identified 32 stations located in areas which it considers are substantially covered by neighbouring stations. In circumstances in which the minimum crewing is not available, the NSWFB may decide to respond adjoining stations rather than backfilling the positions which are left vacant.

3. Electronic Timesheets

This recognises a movement from a paper based to an electronic based payment system.

4. Streamline Station Officers Promotional Program (SOPP)

The SOPP is now shorter in duration which means firefighters are off line for a shorter period from core business activities. This has a flow on effect of reducing overtime.

5. Streamline Inspectors Promotional Program (IPP)

The IPP is now shorter in duration which means officers are off line for a shorter period from core business activities. This has a flow on effect of reducing overtime.

6. Streamline Recruit Training Program

The Recruit Training Program is now shorter in duration which means NSWFB will be able to utilise recruits earlier. This has a flow on effect of reducing overtime.

Annexure “C”

Respondent’s opening submissions in IRC proceedings
(IRC 829 of 2012) dated 30 July 2012

IRC 829 of 2012

Fire Brigades Employees Union of NSW

Notifier

Fire and Rescue New South Wales

Respondent

Opening submission by Fire & Rescue NSW in response to a s130 dispute notification by the Fire Brigades Employees' Union of NSW re: minimum crewing.

1. The Respondent appreciates that it is not usual practice that a Respondent party would file a submission in writing to the originating application of a Notifier prior to the first compulsory conference in the matter being convened. This submission has been prepared and filed this morning by Fire & Rescue NSW to assist the Commission gain an understanding of the issues that the Respondent would advance, but more quickly than may occur if the respondent were simply to make the following submission by way of verbal submission in the hour allocated to this matter this morning.
2. This submission might then only need to be supplemented verbally to the extent necessary to address anything unanticipated stated by the Notifier in today's proceedings.

Submission

3. The Fire Brigades Act of 1989 places the duty and responsibility to deal with fires and hazardous material incidents entirely on the Commissioner of Fire & rescue NSW (Part 2, s6).
4. More specifically, the Commissioner is to take all practicable measures for preventing and extinguishing fires and protecting and saving life and property in relation to fires: and similarly in relation to hazardous materials.

5. Accordingly, the Commissioner, in consultation with the Government as appropriate, will make decisions from time to time about the location of stations, when new stations are opened, when existing stations are closed or moved and the number and location of specialised appliances (fire trucks).
6. The Commissioner exercises this heavy responsibility with close reference to objective information obtained from a Fire & Rescue NSW specific risk assessment tool, known as the Resource Allocation Model (RAM). The RAM applies an objective methodology to many risk factors (and combinations of risk factors), including response times for the various categories of risk so that the Commissioner can be satisfied that appropriate resources are available to deal with identified risks in a context of maintaining good response times to critical incidents.
7. For the information of the Commission, the term TOLing is used when a station or appliance is temporarily offline, meaning that the station or appliance is not ready at that time to respond to incidents. It is common for up to 20 stations and/or appliances in the Sydney, Newcastle and Wollongong regions to be taken offline (TOLed) for a shift or part of shift on any day for a variety of reasons. Examples of when Fire & Rescue already TOLs stations or appliance are when:
 - groups of firefighters are undergoing training;
 - some stations are involved in exercises;
 - station staff attend 'station forums';
 - Fire & Rescue NSW staff are performing bushfire hazard reduction activities;
 - firefighters are involved in community safety activities;
 - equipment breaks down;
 - a retained station is taken offline by the Commissioner in a regularised way pursuant to a Commissioner's instruction or Commissioner's 'In Order';
8. 'In Orders' are one of the tools available to the Commissioner to give general instructions to Fire & Rescue NSW employees about a wide range of matters. The Commissioner's capacity to issue 'In Orders' is specifically provided for within the Fire Brigades Regulation of 2008 (s4).
9. One such current In Order is attached to the FBEU's application in this matter as attachment B. On 19 September 2008, the Full Bench issued a decision (with an attachment) in relation to the Awards for both Permanent - *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011*) and Retained firefighters (*Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011*) (NB: FBEU's attachment C to its application). The decision was arrived

at via the 'Bluescope Model' in the context of the then Government's 2007 Wages Policy. That Wages Policy has since been superseded but required wages increases above 2.5% per annum to be funded by identified savings. One of the numerous savings initiatives put forward by Fire & Rescue to fund wages increases to firefighters was to introduce a more regularised TOLing of retained stations. The In Order subsequently issued by the Commissioner identified numerous retained stations and the conditions that would apply to those stations being TOLED. It should be noted at this stage that FRNSW categorises fire stations as (1) Fulltime permanent firefighters, (2) 'mixed' stations, which employ both permanent and retained firefighters and retained stations that comprise of retained firefighters. .

10. TOLing is not an Award matter for either the Permanent or Retained Awards and the extent of TOLing by the Commissioner does not impinge on any right or entitlement of firefighters and is not otherwise prescribed by any industrial instrument.
11. As stated, the Commissioner is responsible to determine the response capability of Fire & Rescue NSW. This includes decisions about which and how many stations or appliances are taken offline or TOLED, having regard to all the circumstances and foreseeable risks at the time.
12. The Commissioner has decided to regularise some TOLing of permanent stations and intends to give clear instructions on how such TOLing will operate by way of a further/or replacement In Order tomorrow morning.
13. There is a vital imperative to commence this TOLing immediately.
14. The FBEU have had an ample opportunity to consider the specific TOLing arrangements intended, in the knowledge of the FBEU making this dispute notification however, it is out of respect for this Commission and its processes that a regularised form of TOLing has not already been commenced at permanent stations.
15. As this Commission may know, Fire & Rescue NSW, along with other NSW Public Sector agencies, is obliged to ensure that its labour expenses not exceed 1.2% growth per annum for each of the next four years as part of the NSW Government's 2012/13 Budget.
16. Fire & Rescue NSW overtime costs have been identified as the most substantial cost item that could be reduced in time to meet the first required timeframe of the 2012/13 financial year. There is more time to consider how alternate savings might be made by other initiatives for the later financial years.

17. The overtime budget for Fire & Rescue NSW last financial year was \$17.6m. That budgeted amount was exceeded with an actual overtime cost of around \$25m. To meet the required savings for this financial year, the actual overtime needs to be around \$10m. Based on last year's overtime experience, Fire & Rescue will need to save around \$15m in overtime in the 11 months that remain of this financial year. This required saving will increase on a monthly basis whilst overtime remains unchecked, and the task will become more and more difficult with each passing day and at some stage soon, impossible. That is why an immediate commencement of the TOLing initiative is now intended.
18. The connection between TOLing and savings in overtime needs to be explained. When a permanent firefighter takes an absence on short notice or on no notice, for any reason, Fire & Rescue has previously sought to fill that vacancy with a spare firefighter at that location, or with a 'relieving firefighter' on shift at some other location or with a 'spare' at some other location. When filling the short term vacancy with a firefighter on shift is not possible, a firefighter is called in on overtime to fill the vacancy.
19. The reason why the vacancy is routinely filled is to ensure that the station and its appliances remain 'online' and are ready to deploy to any critical incident. Fire & Rescue NSW has reconsidered, with reference to the RAM, whether every station and/or each appliance needs to remain online at all times and accordingly whether such short term vacancies should always be filled. Fire & Rescue NSW has decided that automatically filling all these vacancies is costly, particularly on an overtime basis, and not necessary on a risk basis.
20. At this time, Fire & Rescue intends to only TOL a maximum of 8 stations out of about 100 stations in Sydney. This will not include specialised stations that operate "Aerial", "Rescue", or Hazmat" appliances as provided for in the "by consent" Interim Award made by the Full Bench of the Industrial Relations Commission in matter No. 698 of 2012 on 21 June 2012.
21. It should be noted by this Commission that overtime is not a right or an entitlement within either the Permanent or Retained Firefighter Awards, but is a discretionary matter for Fire & Rescue NSW.
22. I ask the Commission to note that when it has suited the FBEU, they have been very comfortable with the idea of TOLing. In fact, they have forced the TOLing of stations and appliances many times in the past and to a much greater extent than 8 stations. Recently for instance:

- When the FBEU took strike action on 21 June this year in connection with proposed new Workers Compensation legislation, by directing their members to take part, they effectively TOLed every station and every appliance in Sydney, Wollongong, the Central Coast and Newcastle (some 230 stations).
 - On 20 October last year, the FBEU imposed bans on relieving, standbys and out-duties. This prevented Fire & Rescue NSW from moving staff to other locations so as to make up minimum crews at those other stations, and thus forced Fire & Rescue to TOL.
 - On 8 September last year, the FBEU took limited industrial action in connection with proposed new Industrial Relations laws, which included directing some 36 stations in Sydney and 3 in Wollongong to take part, taking the total of 39 stations offline.
 - On 14 June last year, the FBEU also took limited industrial action in connection with the proposed new Industrial Relations laws, which included directing some 36 stations in Sydney, 3 in the Illawarra and 4 in Newcastle to take part, taking the total of 43 stations offline.
23. Fire & Rescue has consulted with the FBEU in high level meetings over the last month or more and has twice written to the FBEU about the matter of TOLing. The Fire & Rescue correspondence of 20 July 2012 (attachment A to the FBEU's application in this matter) invites the FBEU to provide comments about the proposed TOLing and/or to meet with the Deputy Commissioner and Assistant Commissioner to discuss the matter. The FBEU did not seek such discussion but did reply on 26 July 2012 advising, amongst other things, that "*The Union will therefore oppose any extension of TOLing..*". The FBEU then notified this dispute.
24. The FBEU's latest communication to its members, a Friday night 'Sitrep' on 27 July 2012, concedes the Union's officials have spent the past fortnight considering their response to the budgetary situation but also repeating that they are "flatly opposed" to any extension of TOLing. As far as Fire & Rescue is concerned, the notification of this matter as a dispute at this time is simply the FBEU trying to use a delayed introduction of TOLing as leverage to force Fire & Rescue to negotiate on other alternatives the FBEU puts forward.
25. Fire & Rescue is very willing to consider alternatives to TOLing, but none of them can save the required amount in the immediately required timeframe. If the required savings are not made in the near future, a permanent reduction in the number of firefighter jobs may become the alternate reality.

26. The TOLing of some permanent stations or appliances by Fire & Rescue NSW will involve those permanent stations or appliances going offline, and therefore not being called upon to attend critical incidents. Firefighters at TOLed stations will be required instead to attend other stations so as to make up the required crewing at those other stations. This will save on overtime and not compromise the health and safety of firefighters in any way. In this context, the FBEU has not explained its assertion to the effect that 'safe and effective crewing' is somehow threatened. The Commissioner has advised the FBEU and workforce numerous times recently that there is no intention to change the crewing situation of appliances, mostly being one Station Officer and 3 firefighters. This crewing was established in the early 1980s to ensure efficient functioning and safety in relation to structural fires.
27. The law is well settled on the rights of an employer to make decisions as to how the business is run; In this case, decisions about the extent of resources that are 'online' at any time or to the manning levels of permanent stations that are 'offline'. Commencing TOLing of a limited number of permanent stations, consistent with a risk methodology, is a matter of discretion for the Commissioner, except where the decision "would impose unfair or unreasonable demands on employees, including unsafe work practices" (Re John Lysaght (Australia) Limited – Port Kembla – Slit Recoil Line Rates of Pay Award (unreported, Hungerford J, IRC94/2374, 12 March 1995)., which the Commissioner's decision does not do.
28. The decision of Stanton C in the matter of the Health Services Union and Ambulance Service of New South Wales re Changes to Demand Protocol [2008] NSWIRComm 1027 (13 June 2008) conveniently refers to many previous decisions on this point at pages 33 to 35, paragraph 146. The rule is expressed in part by Stanton C at paragraph 146 as follows:

"On the authorities, summarised the following is the legal position:

"First, an employer has the right to manage his own business in his own way; secondly, the Commission will not interfere with this right unless it is satisfied that intervention is justified because in the exercise of this right unjust or unreasonable demands or conditions are imposed, or because the action of the employer is taken in bad faith or amounts to victimisation or oppression or the like."

29. Stanton C also quotes from the AIRC in *Shell Company Australia Limited and Others v Transport Workers' Union of Australia* (unreported, Sweeney C, C No 3303 of 1986, 13 January 1987), who stated

"The overwhelming principle involved in this matter is the long established right of management to allocate and arrange the work and for employees to respond to reasonable management requirements."

30. As stated, permanent firefighters will not be asked to respond to critical incidents if they are at a TOLed station or allocated at that time to a TOLed appliance. They will remain at their station or be required to attend an alternate station. There is nothing unreasonable, unsafe or unjust about this requirement.
31. I ask the Commission to note that the Permanent Firefighters Award. That Award, provides, at Clause 12.17, that firefighters can be directed to perform 12 'outduties' per year. This is the express provision that allows firefighters to be directed to attend other locations and perform duty there.
32. On the matter of the FBEU seeking savings to be attributed to 'employee related cost savings' in the context of Award negotiations: It is submitted that that matter can easily be determined later.
33. There are many matters that would have to be considered before any savings or any portion of them could be allocated or considered for their eligibility as 'employee related cost savings'. The obvious threshold step however is that they would have to firstly be achieved (see the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011, Clause 6 Other Policies (1) (b)).
34. The Commission should note that the Permanent Firefighters Award remains within its nominal term until 20 February 2012 and the Retained Firefighters Award remains within its nominal term until 21 February 2013.
35. It is submitted that the implementation of TOLing should not be prevented or delayed by this Commission on the basis of the FBEU's desire to discuss 'employee related cost savings' at this time.
36. It is submitted that the only issues appropriately to be considered by the Commission at this time is the robustness of the FBEU's assertion as to the TOLing initiative impacting on safe crewing of appliances responding to incidents. An assertion Fire & Rescue maintains is untrue.

37. Fire and Rescue will respond only as necessary to the claims made by the FBEU later this morning that have not been anticipated by this submission.

If the Commission pleases.

Fire and Rescue New South Wales

30 July 2012