

- 7.2.4. requiring a minimum period of leave every 12 months to reduce leave liabilities
- 7.2.5. limiting access to 'top up' sick leave
- 7.2.6. reduced accrual of leave during unpaid sick leave
- 7.2.7. limiting access to transferred employees compensation payments
- 7.2.8. call backs within 4 hour periods not to attract additional payment
- 7.2.9. higher duties allowances only paid after a minimum of 5 days acting
- 7.2.10. reduction in the accrual of maximum rostered days off
- 7.3. Employee related cost savings should not include:
  - 7.3.1. productivity improvements which do not result in employee related cost savings
  - 7.3.2. savings which the agency has already nominated as part of its efficiency dividend or other whole of government savings measures
  - 7.3.3. savings that were realised prior to the commencement of this policy or during the period covered by an industrial instrument made prior to the commencement of this policy
  - 7.3.4. revenue increases
  - 7.3.5. enforcement of existing provisions in industrial instruments and policies, which agencies can implement without agreement
  - 7.3.6. an agency reform process that is unrelated to employee related cost savings and in relation to which the workforce has undertaken to provide its cooperation
  - 7.3.7. the avoidance of future costs which have not been formally budgeted
  - 7.3.8. whole of government policy or legislative change introduced outside of a bargaining process
  - 7.3.9. office relocations.
- 7.4. A decision to discontinue a service should generally not be counted as an employee related cost saving measure except in so far as it will require additional productivity and skills from the remaining employees.
- 7.5. A component of savings from investments in new technology should be retained by the agency or used as a contribution towards efficiency dividends. A portion of savings from the investment in new technology may be included for the purpose of increases in remuneration or other conditions of employment when:
  - 7.5.1. it results in a saving in employee related costs
  - 7.5.2. requires a significant change in work practice or skills, and
  - 7.5.3. an agency has retained an appropriate share of the benefits taking into account the cost and risk of the investment decision.

## 8. Process to Negotiate Wages and Conditions

- 8.1. Agencies must consult the Wages Policy Taskforce on any proposal that may result in changes to remuneration or other conditions of employment – including agreements
-

negotiated under clause 10 of the *Crown Employees (Public Service Conditions of Employment) Award 2009* or any successor award – prior to commencing negotiations.

- 8.2. The Wages Policy Taskforce is convened by the Department of Premier and Cabinet ("DPC") and includes representatives of NSW Treasury, the Department of Finance and Services and the Public Service Commission (when established).

Develop a bargaining agenda

- 8.3. Agencies must contact DPC 6 months prior to the expiry of an industrial instrument. The Wages Policy Taskforce will assist the agency to develop its bargaining parameters. Agencies will appropriately resource the Taskforce.
- 8.4. Agencies covered by sector wide instruments will be consulted by DPC in respect of cross agency reforms.
- 8.5. The Government may identify priority areas of reform that agencies may be required to include in their bargaining parameters. Agencies must also consider any other priority areas of reform within their organisation.

Gain approval of bargaining parameters

- 8.6. Bargaining parameters must be approved by the Wages Policy Taskforce or the Expenditure Review Committee 3 months prior to the expiry of the current industrial instrument and before an offer is made.
- 8.7. The approval process involves the following steps:
- 8.7.1. The Wages Policy Taskforce reviews the proposed bargaining parameters.
- 8.7.2. Where the proposed bargaining parameters are consistent with the policy and government priorities and any proposed increases to remuneration or other conditions of employment are up to 2.5 per cent per annum, the Wages Policy Taskforce may approve the bargaining parameters. The Taskforce will report to the Expenditure Review Committee on the proposed offer.
- 8.7.3. Where the proposed bargaining parameters are consistent with the policy and government priorities and any proposed increases to remuneration or other conditions of employment are greater than 2.5 per cent per annum, following consideration by the Wages Policy Taskforce, the agency's portfolio Minister submits the parameters to the Expenditure Review Committee for approval.
- 8.7.4. When submitting the bargaining parameters to either the Wages Policy Taskforce or the Expenditure Review Committee, the agency must provide details of proposed changes to wages and conditions of employment, reform measures and cost savings, as well as a proposed negotiating strategy. Details of proposed employee related cost savings measures must include:
- 8.7.4.1. advice on how the delivery of each of the employee related cost savings will be quantified and reported
- 8.7.4.2. a monitoring plan proposing the process and time frame for assessing the delivery of each of the employee related cost savings measures and identifying the payment strategy, noting that some savings may be realised before others

8.7.4.3. evidence that the proposed employee related cost savings are separate to measures already committed as part of efficiency dividends or other whole of Government savings measures

8.7.4.4. a workforce management plan that outlines how the agency's bargaining parameters align with its overall workforce strategy.

8.7.5. When submitting bargaining parameters to the Expenditure Review Committee, the proposal must be presented in the form of a Cabinet Minute and must contain a Financial Impact Statement endorsed by NSW Treasury.

8.8. When considering bargaining parameters, the Wages Policy Taskforce and Expenditure Review Committee will consider whole of Government implications and potential flow on impacts across the public sector.

8.9. The Expenditure Review Committee may require agencies to prepare an additional business case to support the quantum of any proposed increase.

#### Negotiation principles

8.10. Following Wages Policy Taskforce or Expenditure Review Committee approval of bargaining parameters, an agency may commence negotiations in accordance with the approved parameters.

8.11. Agencies should approach negotiations in a cooperative and problem solving manner, focussing on common interests, objectives and long term gains for stakeholders. All parties are expected to behave in an open manner, with integrity and honesty.

8.12. Agencies should ensure appropriate communication with their employees and other relevant parties regarding their bargaining agenda, the negotiating process and outcomes.

8.13. In appropriate cases, DPC will provide assistance with negotiations.

#### Report to the Wages Policy Taskforce prior to final agreement

8.14. The agency must keep the Wages Policy Taskforce informed of progress of the negotiations and provide details of any settlement proposal to the Wages Policy Taskforce prior to making any final offer.

8.15. An agency may settle an industrial instrument within bargaining parameters approved by the Wages Policy Taskforce or the Expenditure Review Committee, in consultation with DPC. For settlement proposals outside of previously approved parameters, the agency is required to submit a further formal request to Expenditure Review Committee for approval.

#### Formalise the industrial instrument

8.16. Before finalising negotiations and before filing an industrial instrument (or consenting to its filing) for approval, agencies must advise DPC of the outcome of the negotiations or offers made to public sector employees or other relevant parties and provide it with a final copy of the proposed industrial instrument and identified employee related cost savings measures for approval.

#### Monitoring, reviewing and verifying cost savings measures

8.17. Appropriate consultation with the workforce in relation to the implementation of the agreed reform measures should take place during the life of the industrial instrument to

ensure the successful implementation of the measures and the achievement of the associated employee related cost savings.

- 8.18. Agencies will be required to report to the Wages Policy Taskforce on progress towards the achievement of employee related cost savings and implementation of reform measures, as set out in the agency's monitoring plans, and to seek authorisation for the payment of increases to remuneration or other conditions of employment based on those achieved savings. This process should generally occur at least 2 months prior to the date of any scheduled increase.
- 8.19. Once the Wages Policy Taskforce has verified that the employee related cost savings have been achieved, payment of any scheduled increases to remuneration or other conditions of employment dependent on those savings is to be authorised by the date specified in the industrial instrument.
- 8.20. In the event that authorisation to pay a scheduled increase is not granted, the agency is required to notify the relevant parties. In the event the relevant parties do not accept the decision not to pay the scheduled increase the matter may be referred for resolution to the IRC.
- 8.21. NSW Treasury will provide the Expenditure Review Committee with periodic reports on agency progress on the achievement of employee related cost savings and the implementation of reforms.

IN THE ADMINISTRATIVE DECISIONS TRIBUNAL  
GENERAL DIVISION  
SYDNEY REGISTRY

)  
) No. 123306  
)

BETWEEN:

NSW FIRE BRIGADE EMPLOYEES' UNION

Applicant


AND:

FIRE AND RESCUE NSW

Respondent

EXHIBIT "B"

This is exhibit "B" to the affidavit of Darren Husdell sworn on 4 April 2013.

  
.....  
Witness

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2013-04-05 08:31



# SITREP 03/13

## Overtime blow out a sham

The idiotic KPI pressure gauges on the Department's intranet site are a good metaphor for the silliness afflicting FRNSW generally these days. The annual overtime budget for 2012/13 is facing huge overruns not because of increased staff absences (the opposite applies) or even increased operations, but because it was set so pathetically low at \$10M that it was never going to be met. Compare it with previous years:

Financial Year	Perm & Retd total spend	Overtime spend	Overtime as % of total
99/00	\$167.9 M	\$17.7 M	10.5 %
00/01	\$173.6 M	\$18.1 M	10.4 %
01/02	\$181.9 M	\$19.5 M	10.7 %
02/03	\$196.3 M	\$20.9 M	11.0 %
03/04	\$209.3 M	\$20.1 M	10.0 %
04/05	\$222.6 M	\$20.1 M	9.0 %
05/06	\$240.3 M	\$21.8 M	9.1 %
06/07	\$258.6 M	\$19.0 M	7.3 %
07/08	\$271.6 M	\$21.3 M	7.8 %
08/09	\$290.5 M	\$19.8 M	6.8 %
09/10	\$307.5 M	\$17.1 M	5.5 %
10/11	\$316.3 M	\$24.0 M	7.5 %
11/12	\$323.2 M	\$25.0 M	7.7 %
12/13	\$324.6 M (estimate)	\$10.0 M (budgeted)	3.1 %

Since 2000, the annual spend on firefighter overtime has averaged 8.7% of total firefighter wages, so both the 5 and 10 year trends were falling, not climbing. The inevitable and self-imposed "overtime blow out" in 2012/13 is simply a contrived prop with which the Minister and the Department are now using to beat and blame firefighters in order to justify their irresponsible budget cuts.

## Community First Responder

The IRC's Justice Staff has scheduled the work value determination (the size of any allowance or extra payment) for retained members performing Community First Responder (CFR) for hearing on 2 April. This is not a new issue, having remained a "leave reserved" claim by the Union since the 2008 Awards.

The Union successfully argued that there was nothing in O'Farrell's new IR laws which prevents the IRC from determining the size of any wage increases based on work value, only that the IRC can't actually award those increases unless there are offsetting savings found elsewhere to pay for them. The Department argued that employee-related cost savings should be found first, but the Union countered with the obvious: that you can't know how much you need to find until you've valued the work.

This case is significant, and believed to be unprecedented in the new world of O'Farrell's IR reforms which were meant to extinguish work value cases altogether. It is also timely given the O'Farrell Government's release last month of its "Reform Plan for NSW Ambulance", which confirms its intention to roll out first responder across the state, and across FRNSW. More to follow.

Darin Sullivan  
President and Acting State Secretary

Friday 18 January 2013



Fire Brigade Employees Union (FBEU)  
www.fbeu.org.au

IN THE ADMINISTRATIVE DECISIONS TRIBUNAL  
GENERAL DIVISION  
SYDNEY REGISTRY

)  
) No. 123306  
)

BETWEEN:

NSW FIRE BRIGADE EMPLOYEES' UNION

Applicant

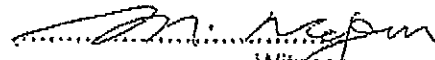
AND:

FIRE AND RESCUE NSW

Respondent

EXHIBIT "C"

This is exhibit "C" to the affidavit of Darren Husdell sworn on 4 April 2013.

  
.....  
Witness

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# SITREP 09/13

## Retained Award application

SITREP 8/13 reported on the Union's application for a new Retained Award following the nominal expiration on 21 February of the 2011 Award (which nonetheless remains in force until it is replaced). A copy of the Union's 2013 Award application, showing all changes from the 2011 Award in red type, can now be downloaded from the online version of this edition of SITREP.

Membership feedback on our awards is a live and ongoing process, with all member suggestions over the preceding 2 years having been taken into consideration by the Retained Sub-Branch Executive and State Committee of Management in formulating our 2013 application. If a member's suggestion has not been included in our application then it should not be assumed that the suggestion was ignored, but rather that the RSB Executive and State Committee could not, on balance, support it. Needless to say we will continue to invite and welcome member comments/suggestions not only throughout the negotiations for this Award, but also over the following three years through to our 2016 Award claim.

The Union's application is now listed for mention before IRC Vice-President, Justice Walton next Tuesday, 12 March. Much more to follow.

## New disciplinary Regs: Dept abandons agreement, and fairness

The 2011 Awards included an agreement "that negotiations will commence for a new disciplinary Regulation to replace the current preliminary and formal inquiry process with a streamlined process which otherwise maintains all existing members' rights and protections, as set out within the Regulation, FRNSW Standing Orders and the Awards. The parties agree that the new process should be both simpler and quicker and with this in mind will, where possible, include minimum time frames, as well as the capacity for appeal to the Industrial Relations Commission."

Brief negotiations in late 2011 led nowhere, and nothing more was heard until October 2012 when we were handed a draft Regulation with a proposed start date of 1 January 2013. The Procedural Guidelines referred to in the proposed Regulation were provided only after the Union wrote in November 2012. For members interested, copies of the both can now be downloaded from the online version of this edition of SITREP but beware - far from being streamlined, the proposed Guidelines are some 60 pages long!

Contrary to our 2011 agreement, the proposed Regulation and the Guidelines do not maintain members' existing rights and protections and for this reason, the Union notified the Industrial Relations Commission of yet another dispute last November. The making of the new Regulation was suspended pending further conciliation as the result of a recommendation to that effect from IRC President, Justice Boland.

The parties returned to the IRC for further conciliation last Friday afternoon. Regrettably, but true to form, the Department made it clear that it is not prepared to entertain any change and further, that it now intended to ram the new Regulation through regardless. The Union has until this Friday to notify the IRC President of our intentions. Stay tuned.

Darin Sullivan  
President and Acting State Secretary

Wednesday 6 March 2013

Fire Brigade Employees Union (FBEU)  
www.fbeu.net



IN THE ADMINISTRATIVE DECISIONS TRIBUNAL  
GENERAL DIVISION  
SYDNEY REGISTRY

)  
) No. 123306  
)

BETWEEN:

NSW FIRE BRIGADE EMPLOYEES' UNION

Applicant

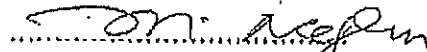
AND:

FIRE AND RESCUE NSW

Respondent

EXHIBIT "D"

This is exhibit "D" to the affidavit of Darren Husdell sworn on 4 April 2013.

  
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Witness

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# SITREP 02/13

## Pants on fire

Some constant themes have emerged from the O'Farrell Government and its apologists in FRNSW senior management in their defence of unprecedented station closures (TOLing).

One is the "business as usual" invention, with Commissioner Mullins repeatedly claiming that there is nothing new about closing fire stations and cutting the number of available appliances and on-shift firefighters. "It has been standard practice for over 100 years" says Mr Mullins. No Commissioner, it hasn't, and every single firefighter in the job knows it.

Government MPs have since been pushing the 100 year angle in their replies to worried constituents, but few are buying. The Labor MP for Maroubra, Michael Daley, made his position clear last week with this response to a FRNSW tweet about a job in his frequently TOLED electorate:

9 Jan Fire & Rescue NSW @FireRescueNSW #FRNSW on scene at a unit #fire, Meeks St, #Kingsford. 24 ppl evac'd, no injuries. F/ighters kept fire to one room - unit being vented.

9 Jan Michael Daley @michaeldaleyMP @FireRescueNSW well done. But how many stations closed tonight in our local area. Daily occurrence now and disaster waiting to happen

Another invention of Commissioner Mullins is the assertion that we agreed to TOLing in 2008 in return for a wage rise. SITREP 45/2012 set the record straight on this issue ("The IRC ruled against the Union on this question, but at no time did we concede the point") however the failure of Mr Mullins, an avid reader of SITREP, to admit he was wrong and retract those comments has now seen the Premier peddling this particular fiction to the public via Twitter:

5 Jan Barry O'Farrell @barryofarrell the question remains why @nswfbcu agreed to the practice in 2008 (when ALP was in office) but now objects #cheappolitics

5 Jan darinsullivan.net @darinsullivan09 @barryofarrell Since when was an IRC special wage case, handed down by full bench, an agreement @FBEU? You've been misled with #wrongpolitics

5 Jan Barry O'Farrell @barryofarrell question remains unanswered - source is the Fire & Resoue Commissioner - <http://www.fire.nsw.gov.au/news.php?news=2176> ...

5 Jan darinsullivan.net @darinsullivan09 @barryofarrell -I've answered your question sir, your info from the #FRNSW Commissioner is wrong. @FBEU @NSWFBEU did NOT agree to closures

We invite Commissioner Mullins to retract those comments and correct the Premier before he misleads Parliament.

And almost on cue, lest the Minister feel left out, came this corker in Saturday's Daily Telegraph: A spokesman for Emergency Services Minister Mike Gallacher said: "There has not been \$70 million in cuts to the FRNSW budget. In fact, the FRNSW budget grew by \$9 million last year."

Perhaps someone should tell Commissioner Mullins, who back on 15 June 2012 wrote to the Union confirming "that FRNSW must work within its allocated budget, which over a four year period will be progressively reduced by a total of about \$70 million."

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# SITREP 02/13

Continued from Page 1

## Flexible A/L and A/L Conversion trials under review

In Orders 2006/27 confirmed our agreement to trial, firstly, an arrangement whereby permanent members could elect to convert some of their annual leave to consolidated leave and secondly, non-rostered and flexible annual leave for Operational Support members. These arrangements, which operate outside of the Award only by mutual consent, were until recently supported by both parties. Not any more.

The Department last month varied and published new Annual Leave Conversion arrangements without our consent, and for the first time closed sections such as Education & Training over the Christmas/New Year period and directed many Op Support members to take forced Annual Leave. Neither of these developments were contemplated by the Union in 2006 and neither is considered acceptable now.

The Union's State Committee of Management will now decide whether either or both trials should be terminated, and the Award enforced, when it meets on 1 February. Interested members are encouraged to contact your elected officials to convey your thoughts on these issues prior to this meeting.

## New "Dad and Partner Pay" (DAPP)

SITREP 14/2012 reported on the Gillard Government's amendments to the Paid Parental Leave legislation to provide for paid Dad and Partner Pay (DAPP) for up to two weeks. These new payments, which are made by the Commonwealth Government, not FRNSW, took effect on 1 January 2013 and are set at the federal minimum wage (currently \$606.40 per week).

This payment is in addition to members' existing Award entitlements under Clause 21 of the Permanent Award and Clause 14 of the Retained Award whereby new fathers are entitled to one week's Paternity Leave at full pay OR two weeks at half pay from the date of the birth, and up to 51 weeks of unpaid paternity leave (or 50 weeks if you take two weeks of paid Paternity Leave at half pay).

Eligible members are entitled to DAPP any time in the first year after your child's birth or adoption. You need to be on leave, either paid or unpaid, during your DAPP period (up to two weeks). You can choose when your DAPP period will start. It can start from the day your child is born or adopted, or it can start later, but for the full two weeks pay it must start within 50 weeks of your child's birth or adoption.

By way of example, an eligible Qualified Firefighter on \$1,344.42 per week who elects to take two weeks of paid Paternity Leave at half pay at \$672.21 per week is now also entitled to two weeks of DAPP at \$606.40 per week, thereby boosting his Paternity Leave pay to \$1,278.61, or only \$65.81 less per week than his ordinary pay. Alternatively, this member could now take a full month off work on \$2,557.22 (\$1,344.42 from FRNSW in paid Paternity Leave and \$1,212.80 in DAPP from the Commonwealth).

Members should contact an Industrial Officer at the Union office for further advice and assistance.

Darin Sullivan  
President and Acting State Secretary

Tuesday 15 January 2013

Fire Brigades Employees Union (FBEU)  
www.fbeu.org.au

17-4-13

RECEIVED

4 - APR 2013

ADMINISTRATIVE  
DECISIONS TRIBUNAL

No. 123306

IN THE ADMINISTRATIVE DECISIONS TRIBUNAL )  
GENERAL DIVISION )  
SYDNEY REGISTRY )

BETWEEN:

FIRE BRIGADE EMPLOYEES' UNION OF NEW SOUTH WALES

Applicant

AND:

FIRE AND RESCUE NSW

Respondent

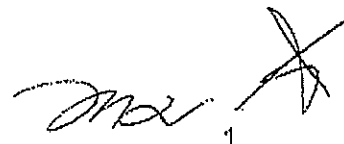
AFFIDAVIT

On 4 April 2013, I, Adam Summons, Chief Financial Officer, Fire and Rescue NSW of Level 10, 227 Elizabeth Street, Sydney NSW 2000 say on oath:

- 1 This affidavit made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness.
- 2 The affidavit is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything I know to be false or do not believe to be true.

**FRNSW**

- 3 I joined Fire and Rescue NSW (FRNSW) in 2011 and currently hold the position of Chief Financial Officer. The duties and responsibilities of my position include financial strategy, accounting operations, financial and management accounting and financial systems for FRNSW.
- 4 FRNSW is also regulated by the *Public Finance and Audit Act 1983*. Under that Act, FRNSW is required to be accountable and to use public monies efficiently and effectively.



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10/10/10

5 Through my role with FRNSW, I am aware of the existence of the Fire Brigade Employees' Union of New South Wales (FBEU) and understand that most, if not all, fire fighters employed by FRNSW are members of the FBEU.

6 I am a member of the Executive Leadership Team (ELT) within FRNSW which comprises the Commissioner, Deputy Chief Executive, Deputy Commissioner and other Executive Directors. The ELT advises the Commissioner on setting strategic direction, monitors organisational performance and makes decisions on planning and allocation of resources.

*FBEU's application for access to government information*

7 I understand that the FBEU made an application under the *Government Information (Public Access) Act 2009 (GIPA Act)* to FRNSW for access to government information relating to FRNSW's possible strategies to meet the NSW Government labour expenses cap, including but not limited to the temporary off line policy (TOL Policy).

8 I also understand that in September 2012, FRNSW released some documents in full to the FBEU in response to the access application. I am also aware that FRNSW has released other documents to the FBEU in part and has refused to release a number of other documents.

9 I am also aware that FRNSW has subsequently released a number of documents to the FBEU that were previously withheld.

10 What I understand to be Documents 38, 40 and 60 of the Schedule of Documents which FRNSW attached to its Notice of Decision in September 2012 include:

(a) Document 38 – Email concerning budget strategies from Darren Husdell, Director of Human Resources at FRNSW, to the ELT dated 15 June 2012.

(b) Document 40 – Briefing to the Minister for Police and Emergency Services dated 9 July 2012 with respect to budget implementation strategy.

(c) Document 60 – Email from me to the ELT dated 24 July 2012.

11 Documents 38, 40 and 60 have not, to date, been provided to the FBEU because there are overriding public interest considerations against disclosure of the information in those documents.

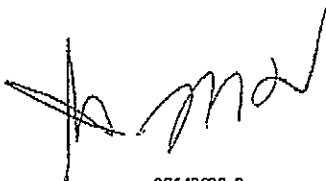
Deliberative process – item 1(e) in the Table to section 14, and Prejudice legitimate business, commercial, professional or financial interests: item 4(d) in the Table to section 14

- 12 Documents 38 and 40 address the budget strategy of FRNSW. Document 60 was prepared in draft form to scope potential opportunities available in July 2012 that may address the savings requirements imposed by the introduction of the Labour Expense Cap by the NSW Government.
- 13 Treasury Circular NSW TC 13/03 "Budget Controls – Labour Expense Cap" requires all general government agencies to manage their budget and forward estimates within the Labour Expense Cap. Annexed to this affidavit as Attachment A is a copy of Treasury Circular NSW TC 13/03.
- 14 FRNSW is involved in a continuing internal deliberative process regarding the implementation of strategies to achieve budget savings and to identify potential options for such savings, whether such measures are ultimately implemented or not. The information in Document 60 directly concerns these ongoing deliberative processes within FRNSW.
- 15 For example, the attachment to the email in Document 60 contains a number of potential budget savings strategies along with assessments of the financial returns, feasibility, and industrial risks associated with each potential strategy or measure.
- 16 These measures were identified as part of FRNSW's response to the NSW Government's Labour Expense Cap requirements and canvass a very broad range of options, some which were assessed as more feasible than others for a broad range of reasons.
- 17 In my opinion, disclosure of the information in Documents 38, 40 and 60 would have a significant prejudicial impact on FRNSW's ability to frankly canvass its potential options for budget savings and its ability of FRNSW to make effective financial decisions in relation to the management of the organisation if potential budget savings strategies are effectively foreclosed by action or lobbying by the FBEU, or by other sources of political pressure.

Prejudice the effective exercise of an agency's functions: item 1(f) of the Table to section 14

- 18 FRNSW must comply with the directions and policies of the NSW Government concerning the management of services and expenditure within and by the agency.

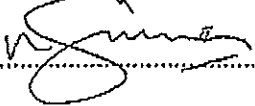
- 19 FRNSW is a general government agency and as such is accountable to the Expenditure Review Committee of Cabinet and NSW Treasury for budget performance. Treasury Circular NSW TC 12/08 "Budget Controls – Net Cost of Services (TC 12/08) requires all general government agencies to manage budgets within net cost of service limits with no tolerance limits.
- 20 The disclosure of the information could reasonably be likely to result in the FBEU taking industrial action in response to any measures with which it disagrees, regardless of the potential impact on its members which may even include preserving jobs.
- 21 This would in turn have a materially adverse impact upon FRNSW's ability to provide the services required of it to the citizens of NSW.
- 22 Any measures to be taken by FRNSW to meet its financial management obligations require extensive internal planning, investment and negotiation prior to engaging with external stakeholders. FRNSW needs to be able to conduct its business in delivering this strategy in a way that does not prejudice the effective exercise of its functions.



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I make this affidavit on oath conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

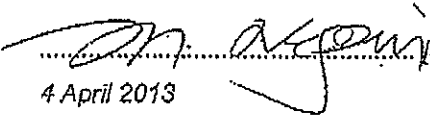
Sworn at: Level 10, 277 Elizabeth Street, Sydney on Thursday, 4 April 2013

 ..... [signature of Adam Summons]

in the presence of an authorised witness, who states: I, *Michael Najem*, a *solicitor of the Supreme Court of NSW with a current practicing certificate*, certify the following matters concerning the making of this affidavit by the person who made it: [*\* please cross out any text that does not apply*]

- 1     \*~~I saw the face of the person~~ ~~OR~~ ~~\*I did not see the face of the person~~ because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
- 2     ~~I have known the person for at least 12 months~~ ~~OR~~ \*I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was

3     ..... *Credit Card* ..... [describe identification document relied on]

 ..... [signature of Michael Najem]  
4 April 2013

Filed By:     Sparke Helmore Lawyers  
                  Level 16, 321 Kent Street  
                  Sydney NSW 2000

On behalf of: Respondent



IN THE ADMINISTRATIVE DECISIONS TRIBUNAL  
GENERAL DIVISION  
SYDNEY REGISTRY

)  
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)  
No. 123306

BETWEEN:

NSW FIRE BRIGADE EMPLOYEES' UNION

Applicant

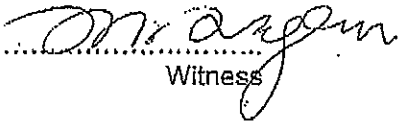
AND:

FIRE AND RESCUE NSW

Respondent

EXHIBIT "A"

This is exhibit "A" to the affidavit of Adam Summons sworn on 4 April 2013.

  
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Witness



Budget Controls – Labour Expense Cap

All general government agencies and selected public trading enterprises are required to manage their budget and forward estimates within a Labour Expense Cap. This Treasury Circular updates the previous Treasury Circular 12/14 *Budget Controls – Labour Expense Cap* by articulating the criteria under which the Labour Expense Cap can be adjusted.

Summary:

This Circular replaces and updates Treasury Circular 12/14, *Budget Controls – Labour Expense Cap*. It provides further details of the circumstances under which the Labour Expense Cap may be adjusted.

The Labour Expense Cap:

- places a ceiling on the total of employee related and contractor expenses (excluding consultants) that can be incurred in any year
- applies to the budget year and each forward estimate year
- applies to all general government agencies and selected public trading enterprises.

The Coordinating Minister of a cluster, supported by the Director-General of the principal department, is required to:

- ensure that the Labour Expense Cap for each agency within a cluster is managed within limits for that agency
- meet any additional expenditure needs in any agency by re-prioritising the Labour Expense Cap between agencies in a cluster.

The primary means for adjusting the Labour Expense Cap is through the Budget process. The approval of the Treasurer must be sought for any proposed increase in Labour Expense Cap for the cluster in aggregate except in the circumstances outlined in this circular.

For general government agencies, the Labour Expense Cap is in addition to net cost of services controls outlined in Treasury Circular NSWTC 12/08 *Budget Controls – Net Cost of Services*.

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For Secretary

Further Information: Your Agency's Treasury Analyst  
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## Budget Controls – Labour Expense Cap

### 1. Background

The introduction of the Labour Expense Cap supports tighter fiscal control necessary during a period of subdued revenue growth. This circular adds to the existing net cost of services control framework and is consistent with the Government's commitment to devolve financial management responsibilities for clusters to Coordinating Ministers and the Directors-General of principal departments.

This Circular is to be considered in conjunction with Treasury Circular 12/08 *Budget Controls – Net Cost of Services*.

### 2. Labour Expense Cap

All general government agencies (as shown in Budget Paper 3) must operate within an approved Labour Expense Cap. In addition, selected public trading enterprises must also operate within their approved Labour Expense Cap.

The Labour Expense Cap comprises total employee related expenses as well as expenditure on contractors (excluding consultants).

### 3. Setting Labour Expense Cap Limits in the Budget Process

The Labour Expense Cap was approved by Expenditure Review Committee of Cabinet and is a key additional budget control measure introduced in the 2012-13 Budget. The cap limits employee related and contractor expenses (excluding consultants) across general government sector agencies as well as selected public trading enterprises.

The Government has decided not to mandate the specific method for achieving employee savings. This provides Directors-General and agency CEOs the flexibility to develop and implement workforce strategies appropriate for the services being delivered. Strategies to meet the Labour Expense Cap include:

- improving efficiency of staffing arrangements to better manage overtime
- reviewing current contracting levels, needs and arrangements
- applying more rigorous job evaluation processes to ensure jobs are properly graded to curb 'grade creep'
- improving workforce management by reducing staffing through natural attrition and retirements
- improving the alignment of staff resourcing with work demands, which may include increasing temporary, part time and/or casual staff for peak workload periods.

As noted in the Budget announcements, teachers in schools, sworn police officers and nurses in hospitals will not be impacted by the Labour Expense Cap although ongoing efficiencies will continue to apply as normal in these areas.

#### 4. Adjustments to the Labour Expense Cap

Adjustments to the Labour Expense Cap for the cluster in aggregate, and the individual agencies within the cluster, will normally only be considered annually as part of the Budget process.

##### *Managing expenditure pressures within clusters*

Clusters are expected to manage their employee related and contractor costs (excluding consultants) within the Labour Expense Cap established in the Budget process. Any additional expenditure needs and cost pressures should normally be managed through re-prioritisation within the cluster.

The principal department must write to Treasury to advise that the Coordinating Minister has exercised the discretion to reallocate the Labour Expense Cap between agencies in the cluster, providing details (including reasons) for the change, concurrently with the submission of monthly monitoring data.

##### *Net Cost of Services*

Treasury Circular NSWTC 12/08, *Budget Controls – Net Cost of Services*, requires clusters to strictly manage within a net cost of services control and approvals to exceed this control will be granted in exceptional circumstances only. Where such an approval is given, it will incorporate the necessary approved adjustment to the Labour Expense Cap.

##### *Funding for Redundancy Payments*

Treasury Circular NSWTC 12/01, *Funding for Redundancy Payments*, details arrangements to assist agencies meet the specific one-off costs associated with redundancies. The approval process under these arrangements will include approval to adjust the Labour Expense Cap to accommodate the payment of redundancies from the grants provided by the Crown.

##### *Other adjustments to the Labour Expense Cap*

The purpose of the Labour Expense Cap is to constrain growth in labour expenses without impacting efficient service delivery. In limited circumstances, an adjustment to the Labour Expense Cap may be necessary to support efficient service delivery, for example to manage the impact on labour-related expenses of volatility of third party revenue sources. In such circumstances, the Principal Department in the cluster should request approval for an adjustment from Treasury. In the case of third party revenue sources, it can generally be assumed that an adjustment will be approved provided it does not increase Net Cost of Services and does not result in an ongoing underlying increase in labour-related expenses.

#### 5. Carrying forward any unused Labour Expense Cap

In appropriate circumstances and subject to approval, any unspent Labour Expense Cap may be carried forward from the current financial year to a future financial year.

The criteria for carrying forward any unspent Labour Expense Cap is the same as outlined in Treasury Circular NSWTC 12/08, *Budget Controls – Net Cost of Services*.

#### 6. Commonwealth National Agreements and National Partnerships

Where the extent of Commonwealth funding through National Agreements and National Partnerships is modified, Treasury will automatically adjust the Labour Expense Cap by an appropriate amount.

#### 7. Further information

If you require further information or have any queries on this circular, please contact the Treasury analyst for your agency.