

**CROWN EMPLOYEES (FIRE AND RESCUE NSW FIREFIGHTING STAFF DEATH AND DISABILITY) AWARD ~~2012~~2014**

**INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES**

Application by the Fire Brigade Employees' Union of New South Wales

IRC Matter No. ~~440 of 2012~~

Before the Commission

**Award**

**PART A - INTRODUCTION, INTENTIONS AND COMMITMENTS, INDEX AND DEFINITIONS**

**CLAUSE 1 – INTRODUCTION, INTENTIONS AND COMMITMENTS**

- 1.1 This Award shall be known as the “Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award ~~2012~~2014”.
- 1.2 The intentions and commitments of this Award are to:-
- 1.2.1 Provide benefits in the event that an on duty or off duty injury results in the death or total and permanent incapacity or partial and permanent incapacity of a firefighter.
- 1.2.2 Provide appeals mechanisms and, for permanent firefighters rehabilitation and retraining in the event that on duty or off duty injury results in a firefighter suffering partial and permanent incapacity.
- 1.2.3 Develop and implement an agreed health and ~~fitness programme~~wellness program for firefighters.
- 1.3 This Award shall be in four parts as follows:
- Part A - Introduction, Intentions and Commitments, Index and Definitions.
- Part B - Arrangements for firefighters entitled to the death and disability benefits prescribed by this Award.
- Part C - Health and ~~Fitness Programme~~Wellness Program.
- Part D - Disputes, Anti-~~discrimination~~Discrimination, Leave Reserved and Area, Incidence and Duration.

**CLAUSE 2 - INDEX**

- Clause 1 - Introduction, Intentions and Commitments
- Clause 2 - Index
- Clause 3 - Definitions
- Clause 4 - Death and Disability Superannuation Fund
- Clause 5 - Contributions to the Death and Disability Superannuation Fund
- Clause 6 - Other Benefits Applicable to Firefighters
- Clause 7 - Permanent Firefighters - Pensions for “On Duty” Death and Total and Permanent Incapacity

- Clause 8 - Permanent Firefighters - Lump Sum Payments for “Off Duty” Death and Total and Permanent Incapacity
- Clause 9 - Rehabilitation and Retraining and Lump Sum Payments for Permanent Firefighters who suffer Partial and Permanent Incapacity
- Clause 10 - Retained Firefighters - Pensions for “On Duty” Death and Total and Permanent Incapacity
- Clause 11 - Retained Firefighters -Lump Sum Payments for “Off Duty” Death and Total and Permanent Incapacity
- Clause 12 - Lump Sum Payments for Retained Firefighters who suffer Partial and Permanent Incapacity
- Clause 13 - Assessment of Entitlement to Benefits
- Clause 14 - Health and ~~Fitness~~Wellness
- Clause 15 - Grievance Mechanism
- Clause 16 - Anti-Discrimination
- Clause 17 - Leave Reserved
- Clause 18 - Area, Incidence, Duration and Parties Bound
- Annexure A - Partial and Permanent Incapacity Benefits Payment Scale
- Annexure B - Agreed mechanism for assessment of entitlement to benefits provided by FRNSW pursuant to subclause 13.1
- Annexure C - Template letters for the purposes of subclause 13.1 and Annexure B
- Annexure D - Fire and Rescue NSW Health and Wellness Program

### **CLAUSE 3 - DEFINITIONS**

“**actual retained earnings**” means the average annual remuneration received by a retained firefighter calculated over either the preceding twelve months or five years, whichever is the greater, provided that any periods of special leave without pay, unpaid leave and/or suspension shall not be taken into account when calculating the periods of twelve months and five years.

“**actuary**” means an actuary appointed by the Trustee of the Death and Disability Superannuation Fund.

“**compulsory employer contributions**” has the same meaning as it has in section 12(1) of the First State Superannuation Act 1992.

“**Death and Disability Superannuation Fund**” means the superannuation fund established in accordance with Part B of this Award.

“**electricity industry superannuation scheme**” (“EISS”) has the same meaning as it has in the Superannuation Administration Act 1996.

“**FBEU**” means the Fire Brigade Employees’ Union of New South Wales.

“**FRNSW**” means Fire and Rescue New South Wales, established as a Department of the Government under the Fire Brigades Act 1989 and a Division of the Department of Attorney General and Justice under the ~~Public Government~~ Sector Employment ~~and Management~~ Act ~~2002~~2013.

“**firefighter**” means either a permanent firefighter or a retained firefighter as defined in this clause.

“**First State Superannuation Scheme**” (“FSS”) means the superannuation scheme established under the First State Superannuation Act 1992.

“**full pay**” means the permanent firefighter’s remuneration at the date of his/her injury, including any per rostered shift or weekly allowance that he/she was receiving at the date of his/her injury, or such higher remuneration to which the firefighter becomes entitled pursuant to that Award. Provided that where a permanent firefighter is at the date of his/her injury on any form of leave, his/her initial full pay shall be the

remuneration (subject to the exclusions referred to within this definition) that would otherwise have been paid to the firefighter had he/she not been on such leave.

**“Judges Pension Scheme”** (“JPS”) means the superannuation scheme established under the Judges’ Pensions Act 1953.

**“local government superannuation scheme”** (“LGSS”) has the same meaning as it has in the Superannuation Administration Act 1996.

**“on duty injury”** means personal injury arising out of or in the course of employment as a firefighter and includes a disease which is contracted by a firefighter in the course of his/her employment as a firefighter and to which the employment was a contributing factor, and the aggravation, acceleration, exacerbation or deterioration of any disease, where his/her employment as a firefighter was a contributing factor to the aggravation, acceleration, exacerbation or deterioration but does not include a personal injury or disease arising out of or in the course of journeying to or from work subject to the proviso that a retained firefighter responding to an incident shall be considered to be on duty from the time of call.

**“off duty injury”** means any personal injury or disease which is not an on duty injury.

**“Parliamentary Contributory Superannuation Fund”** (“PCSF”) means the fund referred to in section 5 of the Parliamentary Contributory Superannuation Act 1971.

**“partial and permanent incapacity”** means that a firefighter is no longer fit to carry out the full range of his/her pre-injury duties with FRNSW.

**“PBRI”** means the Police Blue Ribbon Insurance arrangements established under the Police Amendment (Death and Disability) Regulation 2011.

**“permanent firefighter”** has the same meaning as ‘employee’ under the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011, or its successor.

**“Police Superannuation Scheme”** (“PSS”) means the superannuation scheme established under the Police Regulation (Superannuation) Act 1906.

**“retained firefighter”** has the same meaning as ‘employee’ under the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011, or its successor.

**“retained firefighter’s deemed salary”** means the hourly rate of pay of a retained Captain multiplied by a factor of 2088.

**“retained firefighter's primary employment”** means employment with an employer other than FRNSW. In order for a retained firefighter's employment with an employer other than FRNSW to be eligible as primary employment for the purposes of payment of benefits pursuant to subclause 12.4 of this Award, the primary employment must be held as at the date of the on duty injury, and must be permanent employment of an average of at least 30 hours per week.

**“salary”** means, in the case of a permanent firefighter holding the rank of Recruit Firefighter, Firefighter Level 1, Firefighter Level 2, Qualified Firefighter, Senior Firefighter, Leading Firefighter, Station Officer Level 1, Station Officer Level 2 or Inspector, the firefighter’s “Total Weekly Rate” as set out at Table 1 of Part D of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011 multiplied by 52.1785 and, in the case of a permanent firefighter holding the rank of Superintendent or Chief Superintendent, the per annum amount set out at Table 1 of Part D of that Award provided that for the purposes of this Award, the salary of an employee holding an Operational Support position shall be that applicable to the employee’s substantive operational rank.

“**spouse**” means a person who falls within the definition of “spouse” or “de facto partner” in the Superannuation Act 1916.

“**total and permanent incapacity**” means that the firefighter is unlikely, by reason of ill-health (whether physical or mental) to ever again engage in gainful employment for which the firefighter is reasonably qualified by education, training or experience.

“**State Authorities Non-contributory Superannuation Scheme**” (“SANCS”) means the superannuation scheme established under the State Authorities Non-contributory Superannuation Act 1987.

“**State Authorities Superannuation Scheme**” (“SASS”) means the superannuation scheme established under the State Authorities Superannuation Act 1987.

“**State Superannuation Scheme**” (“SSS”) means the superannuation scheme established under the Superannuation Act 1916.

## **PART B - ARRANGEMENTS FOR FIREFIGHTERS ENTITLED TO THE DEATH AND DISABILITY BENEFITS PRESCRIBED BY THIS AWARD**

### **CLAUSE 4 - DEATH AND DISABILITY SUPERANNUATION FUND**

- 4.1 ~~The NSW Fire Brigades will establish, with the agreement of the FBEU, There shall be~~ a Death and Disability Superannuation Fund, established by FRNSW with the agreement of the FBEU, to pay the benefits prescribed by Clauses 7 and 10 of this Award. The Fund shall operate in accordance with relevant Commonwealth legislation and the terms of the trust deed by which it is created.
- 4.2 The terms of the trust deed by which the Death and Disability Superannuation Fund is created shall provide that the Trustee of the Death and Disability Superannuation Fund is required to reduce the benefits otherwise payable from the said fund so as to offset:
- 4.2.1 tax liabilities in the same circumstances and on the same bases as prescribed in section 61RA of the Superannuation Act 1916;
  - 4.2.2 any benefits prescribed by this Award that have previously been paid from the Death and Disability Superannuation Fund or by FRNSW pursuant to this Award.

### **CLAUSE 5 - CONTRIBUTIONS TO THE DEATH AND DISABILITY SUPERANNUATION FUND**

- 5.1 Permanent firefighters who are covered by FSS or who have elected under section 10 of the First State Superannuation Act 1992 to make other arrangements shall contribute 1.5 per cent of their salary to the Death and Disability Superannuation Fund.
- 5.2 Permanent firefighters who are contributors to SASS but who do not contribute to SASS for additional benefit cover shall contribute 1.5 per cent of their salary to the Death and Disability Superannuation Fund.
- 5.3 Permanent firefighters who are contributors to SASS and who contribute for additional benefit cover and who elect to relinquish that cover shall contribute 1.5 per cent of their salary to the Death and Disability Superannuation Fund.
- 5.4 Permanent firefighters who:
- 5.4.1 are contributors to SASS; and

- 5.4.2 contribute to SASS for additional benefit cover; and
- 5.4.3 elect not to relinquish that additional benefit cover,  
 may elect to contribute 0.5 per cent of their salary to the Death and Disability Superannuation Fund in order to be entitled to receive the payments prescribed by this Award at subclauses 7.2 and 8.3 in relation to death or total and permanent incapacity and at Clause 9 in relation to partial and permanent incapacity only.
- 5.5 Permanent firefighters who:
- 5.5.1 are contributors to SASS; and
- 5.5.2 contribute to SASS for additional benefit cover; and
- 5.5.3 elect not to relinquish that additional benefit cover,  
 may elect to not be covered by this Award. Such firefighters shall not be eligible to receive a pension or lump sum payment prescribed by this Award.
- 5.6 The contributions prescribed by this Award in relation to permanent firefighters who are contributors to SASS are additional to the contributions that they are required to make under the State Authorities Superannuation Act 1987.
- 5.7 Notwithstanding the provisions of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011 and the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011, a firefighter who is required or elects to make contributions pursuant to this clause will do so by sacrificing an amount of unearned salary equivalent to the firefighter's contribution pursuant to this clause, unless they elect to contribute from their post-tax salary. Such salary sacrifice shall not be taken into account for the purpose of calculating the remuneration that the firefighter would have received in the event that no salary sacrifice had been applicable.
- 5.8 A permanent firefighter who is a contributor to SASS and who contributes for additional benefit cover shall within three months of commencing employment make an election on a "once only" basis, whether they wish to retain or relinquish that additional benefit cover.
- 5.9 Subject to subclause 5.10, FRNSW shall contribute \$~~18.82~~19.73 per fortnight to the Death and Disability Superannuation Fund in respect of each retained firefighter.
- 5.10 FRNSW shall contribute \$6.~~27~~58 per fortnight to the Death and Disability Superannuation Fund in respect of each retained firefighter who, by virtue of their primary employment, is already a member of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF, PBRI or who is a LGSS or EISS Division B "Retirement Scheme" member with additional benefit cover or who is a SASS member with additional benefit cover.
- 5.11 FRNSW shall contribute to the Death and Disability Superannuation Fund such sum as may be necessary to meet any shortfall between the Fund's reserves and that sum that it needs in order to pay the superannuation pensions and superannuation lump sum benefits prescribed by this Part.
- 5.12 A firefighter on any form of leave without pay shall continue to be covered by this Award and shall be required to make the contributions that he/she would otherwise have made had he/she not been on leave without pay.

- 5.13 FRNSW shall deduct the contributions that firefighters are required or elect to make pursuant to this clause from their salaries and forward such contributions to the Death and Disability Superannuation Fund.

**CLAUSE 6 - OTHER BENEFITS APPLICABLE TO FIREFIGHTERS**

With the exception of the offsets prescribed by this Award, the benefits conferred upon firefighters by this Award shall be in addition to those benefits otherwise payable under the FSS Scheme, the SASS scheme and/or the Workers Compensation Act 1987 and Workplace Injury Management and Workers Compensation Act 1998, as varied from time to time.

**CLAUSE 7 - PERMANENT FIREFIGHTERS - PENSIONS FOR “ON DUTY” DEATH AND TOTAL AND PERMANENT INCAPACITY**

- 7.1 In the case of those permanent firefighters who contribute to the Death and Disability Superannuation Fund in accordance with subclauses 5.1, 5.2 or 5.3 of this Award, a pension in accordance with this subclause shall be payable from that Fund in the event that an on duty injury results in a permanent firefighter’s death or a permanent firefighter suffering total and permanent incapacity.
- 7.2 In the event that an on duty injury results in the death or total and permanent incapacity of a permanent firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 5.4, a lump sum payment of \$~~15~~16,000 shall be paid from that Fund to the permanent firefighter or his/her estate.
- 7.3 7.3.1 A permanent firefighter who becomes totally and permanently incapacitated shall be paid a fortnightly pension calculated in accordance with subclause 7.3.2.
- 7.3.2 Pension =  $\{S/260 + (9xN)\} \times \$5.50$
- Where
- S means the permanent firefighter’s salary on his/her last day of service with FRNSW
- N is the number derived from the calculation of a/b where:
- a is the last published Consumer Price Index (All Groups) for Sydney; and
- b is:
- (a) the number 56.45; or
- (b) if the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, the number used in SSS.
- Where the result of the calculation  $\{S/260 + (9xN)\}$  is not a whole number the result is to be rounded up to the next whole number.
- 7.3.3 The fortnightly pension payable to the spouse of a permanent firefighter who, whilst still employed, dies as a consequence of an on-duty injury shall be two-thirds of the fortnightly pension that would have been payable to the permanent firefighter as calculated in accordance with subclause 7.3.2 above.
- 7.3.4 The fortnightly pension payable to the spouse of a former permanent firefighter who dies while receiving a pension under this Award shall be two-thirds of that former permanent firefighter’s pension at the time of death.
- 7.3.5 Children’s pensions are payable on the same basis as in SSS.
- 7.3.6 Pensions may be commuted on the same basis as applicable to SSS pensions.

- 7.3.7 The provisions of the other subclauses of this clause shall not apply in the event that an on duty injury results in the death of a permanent firefighter who does not have a spouse at the time of his or her death. In such cases, the permanent firefighter’s death shall, for the purposes of this Award, be treated as if it was the result of an off duty injury and a lump sum payment shall be paid from the Death and Disability Superannuation Fund in accordance with subclause 8.2 of this Award, provided that if the age of the permanent firefighter at the time of his/her death was 65 years or more, then the benefit shall be a lump sum payment equivalent to the permanent firefighter’s salary.
- 7.3.8 A minimum guaranteed lump sum benefit is payable in the same circumstances as prescribed in section 31A of the Superannuation Act 1916, but the “minimum benefit” as defined in section 31A(7) will not apply and for the purposes of this Award the minimum benefit shall be the amount of the offset as calculated under the Award.
- 7.3.9 The value of a primary or reversionary pension is subject to reduction as determined by the actuary where the relevant offset amount prescribed by subclause 7.4 is not paid into the Death and Disability Superannuation Fund.
- 7.3.10 To avoid doubt, the pensions payable under this clause shall be paid for the life of the pensioner and indexed on the same basis as SSS pensions.
- 7.4 In the case of pensions payable under subclause 7.3, the following offsets shall be applicable:
  - 7.4.1 For non-SASS members, the offset shall be an amount that the actuary calculates as representing the compulsory employer contributions made by ~~the NSW Fire Brigades~~FRNSW in respect of the permanent firefighter plus interest on that amount.
  - 7.4.2 For SASS members, the offset equals the total of the SASS employer-financed benefit ~~and~~, but not the SANCS benefit.

**CLAUSE 8 - PERMANENT FIREFIGHTERS - LUMP SUM PAYMENTS FOR “OFF DUTY” DEATH AND TOTAL AND PERMANENT INCAPACITY**

- 8.1 The lump sum payments prescribed by this clause are payable from the Death and Disability Superannuation Fund.
- 8.2 In the event that an off duty injury results in the death or total and permanent incapacity of a permanent firefighter who contributes to the Death and Disability Superannuation Fund in accordance with subclauses 5.1, 5.2 or 5.3 of this Award, a lump sum payment in accordance with the scale set out in subclause 8.4 of this Award shall be paid to the permanent firefighter or his/her estate.
- 8.3 In the event that an off duty injury results in the death or total and permanent incapacity of a permanent firefighter of less than 65 years of age for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 5.4, a lump sum payment of \$15,000 shall be paid to the permanent firefighter or his/her estate.
- 8.4 For the purposes of this subclause, a permanent firefighter’s age shall be his/her age at the time of his/her death or at the date that he/she ceases to be employed by the ~~NSW Fire Brigades~~and Rescue NSW or at such earlier date as may be determined by the Trustee of the Death and Disability Superannuation Fund.

AGE

LUMP SUM

Less than 61 years of age

~~\$350~~\$370,000

At age 61 to less than 62 years of age	\$ <del>280</del> 296,000
At age 62 to less than 63 years of age	\$ <del>210</del> 222,000
At age 63 to less than 64 years of age	\$ <del>140</del> 148,000
At age 64 to less than 65 years of age	\$ <del>70</del> 74,000

**CLAUSE 9 - REHABILITATION AND RETRAINING AND LUMP SUM PAYMENTS FOR PERMANENT FIREFIGHTERS WHO SUFFER PARTIAL AND PERMANENT INCAPACITY**

- 9.1 The lump sum payments prescribed by this clause are payable by way of compensation for loss of earning capacity caused by the partial and permanent incapacity by FRNSW.
- 9.2 A permanent firefighter who is found under Clause 13 to be permanently incapacitated, or who FRNSW and the firefighter agree is permanently incapacitated, shall be considered to have suffered partial and permanent incapacity until such time as they may be assessed by the Death and Disability Superannuation Fund as having suffered total and permanent incapacity, at which point the firefighter's FRNSW employment shall be terminated.
- 9.3 A permanent firefighter who suffers partial and permanent incapacity as the result of an on duty injury shall receive extensive rehabilitation/retraining for up to two years, leading to permanent redeployment to alternative duties. ~~redployment to alternative duties. If redeployment within FRNSW is not possible, the employment of the firefighter may be terminated and, in such circumstances, the firefighter shall receive a lump sum payment in accordance with Annexure A to this Award.~~
- 9.34 A permanent firefighter who suffers partial and permanent incapacity as the result of an off duty injury shall receive extensive rehabilitation/retraining for up to two years, leading to permanent redeployment to alternative duties. Such a firefighter shall not be entitled to any benefit conferred by the provisions of the Workers Compensation Act 1987 or the Workplace Injury Management and Workers Compensation Act 1998 unless that benefit is conferred upon the firefighter by such statutes. ~~If redeployment within FRNSW is not possible, the employment of the firefighter may be terminated. If such termination occurs prior to the expiry of the two years of rehabilitation/retraining, the firefighter shall be paid a lump sum payment equivalent to the unexpired portion of the two years full pay or full pay to age 60 (whichever is the lesser).~~
- 9.45 The objective of the rehabilitation/retraining programme, which is to be on full pay, is to place every permanent firefighter who suffers partial and permanent incapacity in a suitable permanent position within FRNSW. All reasonable efforts will be made by FRNSW to ensure that a permanent firefighter who suffers partial and permanent incapacity is so placed, including by identifying potential employment opportunities as soon as practicable and directing the rehabilitation/retraining programme to that end, and in consultation with the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed).
- 9.56 Where FRNSW believes that, notwithstanding every reasonable effort to the contrary, a suitable permanent position may not be found for a permanent firefighter who, by reason of his or her partial and permanent incapacity, is undergoing the rehabilitation/retraining programme, the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) shall be informed at the earliest possible opportunity.
- 9.67 An incapacitated permanent firefighter's employment will not be terminated because of the lack of a suitable permanent position within FRNSW without the firefighter's consent. In the event that the permanent firefighter does not consent, an adequate opportunity will be given to the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) to consider FRNSW's opinion that no suitable permanent position is available and to put that opinion into dispute in accordance with by referring the dispute resolution clause in this Award matter to the Industrial Relations Commission of New South Wales for final determination.

9.79.8 Upon acceptance by a permanent firefighter suffering partial and permanent incapacity or determination by the Industrial Relations Commission of New South Wales that redeployment within FRNSW is not possible for such firefighter, the employment of the firefighter may be terminated and:

9.8.1 if the permanent firefighter has suffered partial and permanent incapacity as the result of an on duty injury, the firefighter shall receive a lump sum payment in accordance with Annexure A to this Award or subclause 9.8.2 (whichever is the greater).

9.8.2 if the permanent firefighter has suffered partial and permanent incapacity as the result of off duty injury, and such termination occurs prior to the expiry of the two years of rehabilitation/retraining, the firefighter shall receive a lump sum payment equivalent to the unexpired portion of the two years full pay or full pay to age 60 (whichever is the lesser).

9.9 The parties agree that it is anticipated that the rehabilitation/retraining programme and forward planning associated with the programme will minimise the likelihood that any incapacitated firefighter will be terminated because at the end of the rehabilitation/retraining programme, a suitable position is not available.

#### **CLAUSE 10 - RETAINED FIREFIGHTERS - PENSIONS FOR "ON DUTY" DEATH AND TOTAL AND PERMANENT INCAPACITY**

10.1 Retained firefighters who, by virtue of their primary employment, are already members of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who are LGSS or EISS Division B "Retirement Scheme" members with additional benefit cover or who are SASS members with additional benefit cover shall not be entitled to the benefits set out at subclause 10.3. A lump sum payment of ~~\$15~~16,000 shall be paid to such retained firefighters or their estate in the event that an on duty injury results in their death or their suffering total and permanent incapacity.

10.2 In the case of retained firefighters who contribute to the Death and Disability Superannuation Fund (other than those referred to in subclause 10.1) a pension in accordance with this subclause shall be payable from that Fund in the event that an on duty injury results in their death or their suffering total and permanent incapacity.

10.3 10.3.1 A retained firefighter who becomes totally and permanently incapacitated shall be paid a fortnightly pension calculated in accordance with subclause 10.3.2.

10.3.2 Pension =  $\{S/260 + (9xN)\} \times \$5.50$

Where

S means the retained firefighter's deemed salary on his/her last day of service with FRNSW

N is the number derived from the calculation of a/b where:

a is the last published Consumer Price Index (All Groups) for Sydney; and

b is:

(a) the number 56.45; or

(b) if the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, the number used in SSS.

Where the result of the calculation  $\{S/260 + (9xN)\}$  is not a whole number the result is to be rounded up to the next whole number.

- 10.3.3 The fortnightly pension payable to the spouse of a retained firefighter who, whilst still employed, dies as a consequence of an on-duty injury shall be two-thirds of the fortnightly pension that would have been payable to the retained firefighter as calculated in accordance with subclause 10.3.2 above.
- 10.3.4 The fortnightly pension payable to the spouse of a former retained firefighter who dies while receiving a pension under this Award shall be two-thirds of that former retained firefighter's pension at the time of death.
- 10.3.5 Children's pensions are payable on the same basis as in SSS.
- 10.3.6 Pensions may be commuted on the same basis as applicable to SSS pensions.
- 10.3.7 The provisions of the other subclauses of this clause shall not apply in the event that an on duty injury results in the death of a retained firefighter who does not have a spouse at the time of his or her death. In such cases, the retained firefighter's death shall, for the purposes of this Award, be treated as if it was the result of an off duty injury and a lump sum payment shall be paid from the Death and Disability Superannuation Fund in accordance with subclause 11.2 of this Award, provided that if the age of the retained firefighter at the time of his/her death was 65 years or more, then the benefit shall be a lump sum payment equivalent to the retained firefighter's deemed salary.
- 10.3.8 A minimum guaranteed lump sum benefit is payable in the same circumstances as prescribed in section 31A of the Superannuation Act 1916, but the "minimum benefit" as defined in section 31A(7) will not apply and for the purposes of this Award the minimum benefit shall be the amount of the offset as calculated under the Award.
- 10.3.9 The value of a primary or reversionary pension is subject to reduction as determined by the actuary where the relevant offset amount prescribed by subclause 10.4 is not paid into the Death and Disability Superannuation Fund.
- 10.3.10 To avoid doubt, the pensions payable under this clause shall be paid for the life of the pensioner and indexed on the same basis as SSS pensions.
- 10.4 In the case of pensions payable under subclause 10.3, the offset shall be an amount that the actuary calculates as representing the compulsory employer contributions made by FRNSW in respect of the retained firefighter plus interest on that amount.

**CLAUSE 11 - RETAINED FIREFIGHTERS - LUMP SUM PAYMENTS FOR "OFF DUTY" DEATH AND TOTAL AND PERMANENT INCAPACITY**

- 11.1 The lump sum payments prescribed by this clause are payable from the Death and Disability Superannuation Fund.
- 11.2 Subject to subclause 11.4, in the event that an off duty injury results in the death or total and permanent incapacity of a retained firefighter, a lump sum payment in accordance with the scale set out in subclause 11.3 shall be paid to the retained firefighter or his/her estate.
- 11.3 For the purposes of this subclause, a retained firefighter's age shall be his/her age at the time of his/her death or at the date that he/she ceases to be employed by FRNSW or at such earlier date as may be determined by the Trustee of the Death and Disability Superannuation Fund.

AGE

LUMP SUM

Less than 61 years of age

~~\$350~~\$370,000

At age 61 to less than 62 years of age	\$ <del>280</del> 296,000
At age 62 to less than 63 years of age	\$ <del>210</del> 222,000
At age 63 to less than 64 years of age	\$ <del>140</del> 148,000
At age 64 to less than 65 years of age	\$ <del>70</del> 74,000

- 11.4 Retained firefighters who, by virtue of their primary employment, are already members of SSS, PSS, the LGSS or EISS Division D “Defined Benefit Scheme”, the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who are LGSS or EISS Division B “Retirement Scheme” members with additional benefit cover or who are SASS members with additional benefit cover \$~~15~~16,000 shall be paid to such retained firefighters or their estate in the event that an off duty injury results in their death or their suffering total and permanent incapacity.

**CLAUSE 12 - LUMP SUM PAYMENTS FOR RETAINED FIREFIGHTERS WHO SUFFER PARTIAL AND PERMANENT INCAPACITY**

- 12.1 The lump sum payments prescribed by this clause are payable by FRNSW.

~~12.2~~ 12.2 A retained firefighter who is found under Clause 13 to be permanently incapacitated, or who FRNSW and the firefighter agree is permanently incapacitated, shall be considered to have suffered partial and permanent incapacity until such time as they may be assessed by the Death and Disability Superannuation Fund as having suffered total and permanent incapacity, at which point the firefighter’s FRNSW employment shall be terminated.

12.3 FRNSW may terminate the employment of a retained firefighter who suffers partial and permanent incapacity. An adequate opportunity will be given to the retained firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) to consider FRNSW’s intention to terminate the employment of a retained firefighter.

~~12.34~~ In the event that the employment of a retained firefighter is terminated because the firefighter suffers partial and permanent incapacity, the firefighter shall be paid a lump sum payment, by way of compensation for loss of earning capacity caused by the partial and permanent incapacity, in accordance with this clause.

~~12.45~~ A retained firefighter whose employment is terminated because the retained firefighter suffers partial and permanent incapacity as the result of an on duty injury shall be paid a lump sum payment in accordance with Annexure A to this Award, or subclause 12.6 (whichever is the greater), with salary to be determined as follows:

~~12.45.1~~ where there is a loss of FRNSW employment only - on the basis of the retained firefighter’s actual retained earnings;

~~12.45.2~~ where there is a loss of FRNSW employment and the retained firefighter’s primary employment - on the basis of the retained firefighter’s deemed salary on the date that he/she ceases to be employed by FRNSW.

~~12.56~~ A retained firefighter whose employment is terminated because the retained firefighter suffers partial and permanent incapacity as the result of an off duty injury shall be paid a lump sum payment equivalent to two years of the retained firefighter’s actual retained earnings, or actual retained earnings to age 60 (whichever is the lesser).

**CLAUSE 13 - ASSESSMENT OF ENTITLEMENT TO BENEFITS**

- 13.1 Entitlement to the benefits to be provided by FRNSW pursuant to this Award shall be assessed through at the mechanism ~~to be agreed between the parties. The mechanism shall provide that any~~

~~dispute as to the entitlement at Annexure B of a firefighter may be referred to the Industrial Relations Commission of New South Wales for final determination.~~ this Award.

- 13.2 Entitlement to receive a pension or lump sum benefit from the Death and Disability Superannuation Fund shall be assessed in accordance with relevant Commonwealth legislation and the terms of the trust deed by which the Fund is created.
- 13.3 To avoid doubt, a firefighter can receive either a total and permanent incapacity benefit; (pension or lump sum payment), or a partial and permanent incapacity ~~benefit;~~(lump sum payment), but not both.
- 13.4 Subject to subclause 13.2, any dispute as to the entitlement to receive a pension or lump sum payment from the Death and Disability Superannuation Fund or any other dispute arising under or regarding the application of this Award may be referred to the Industrial Relations Commission of New South Wales for final determination.

## **PART C – HEALTH AND ~~FITNESS PROGRAMME~~WELLNESS PROGRAM**

### **CLAUSE 14 - HEALTH AND ~~FITNESS~~WELLNESS**

- 14.1 The parties agree and accept the need for a compulsory ~~health~~Health and ~~fitness programme~~Wellness Program that is underpinned by practical support, education and assistance programs provided by FRNSW.
- 14.2 ~~The parties agree to develop and implement a health and fitness programme~~program shall be carried out in accordance with this clause and the conditions detailed in Annexure D.

#### **Implementation**

- 14.3 The Health & Wellness Program shall be implemented on and from 1 October 2014, with the Health and Wellness Checks to be implemented in accordance with transition arrangements agreed between the FBEU and FRNSW.
- 14.4 A firefighter's Health and Wellness Check shall be conducted every three years in accordance with the following:
- 14.4.1 Firefighters shall be required to attend a Health and Wellness Check during the month corresponding with their date of birth.
- 14.4.2 Firefighters shall be notified two weeks prior to the first day of their respective month that they must arrange a Health and Wellness Check with their nominated medical practitioner.
- 14.4.3 If the firefighter does not attend a Health and Wellness Check within the respective month a subsequent letter will be sent reminding the firefighter of their obligation to undergo a Health and Wellness Check. A copy of this letter will also be sent to the FBEU unless the firefighter expressly declines to agree to the FBEU being informed.
- 14.4.4 A firefighter who at the time of their scheduled Health and Wellness Check is absent from duty on annual leave, long service leave, long term sick leave, long term workers compensation, or parental leave shall not be required to undertake their assessment until such time as they return to duty, at which point their three yearly schedule shall recommence. For the purpose of this clause 'long term' shall mean more than 28 days absence.

- 14.5 The firefighter shall be provided with an information pack, developed in consultation with the FBEU, which the firefighter must give to the medical practitioner conducting the Health and Wellness Check. The information pack shall include a copy of the Health and Wellness standards, an outline of the inherent requirements of the firefighter's job, a template medical report, the lifestyle questionnaire and a list of tests to be undertaken as part of the Health and Wellness Check.
- 14.6 Comprehensive aggregated medical and health information will be collected for the purposes of this program. The collection of such data, which shall not allow for the identification of individual firefighters, including by FRNSW, will allow the parties to make assessments on health risks facing NSW firefighters and to compare the risks of firefighting with that of other work. FRNSW shall make such data available to the FBEU upon request.
- 14.7 FRNSW shall encourage firefighters to carry out exercise as part of their duties and provide assistance to all stations, crews and/or individuals in developing a fitness program, including touch football, jogging, cardiovascular and resistance training in the station gymnasium or an approved external gymnasium.
- 14.8 FRNSW shall provide and maintain gym equipment in fire stations where such equipment can be safely installed, or provide access to external gymnasium facilities (including the payment of any gym fees) where exercise equipment cannot be safely installed at a station.
- 14.9 Employee Assistance Program
- 14.9.1 FRNSW shall provide access to confidential professional counselling services for all firefighters and their immediate family members via an Employee Assistance Program.
- 14.9.2 Firefighters shall be entitled to three visits per issue, per 12 months from the date of their first visit. Assistance shall be provided for a wide range of personal and work related issues including:
- work related issues (conflict, change, etc)
  - alcohol and other drug related problems
  - stress and trauma related problems
  - critical incident stress
  - depression, anxiety
  - family and marital problems
  - grief
  - eating disorders
  - elder care (coping skills, guilt, etc)
  - balancing family and work responsibilities
  - concerns about your children or family members, and
  - referrals to highly specialised services such as financial and legal advice.
- 14.9.3 All consultations shall be completely confidential unless otherwise agreed with the counsellor.
- 14.9.4 Firefighters may refer themselves or a member of their immediate family to the Employee Assistance Program directly, that is they do not have to go through the Department.
- 14.9.5 Attendance at and participation in the Employee Assistance Program shall remain strictly voluntary. Time may be allowed to attend the Employee Assistance Program during working hours if this is convenient to the Department. Otherwise, firefighters shall attend in their own time.

- 14.10 FRNSW shall maintain a critical incident support program for firefighters which includes attendance of a critical support team at major incidents involving multiple fatalities or prolonged exposure, group debriefing and on scene support, defusing, demobilisation, one to one sessions, follow up calls, referral to professional counselling, and ongoing support.
- 14.11 FRNSW will maintain a voluntary flu vaccination program for permanent and retained firefighters that will provide for the reimbursement of the costs associated with being vaccinated against the flu on an annual basis.
- 14.12 FRNSW shall provide specialist health surveillance to operational personnel in high risk exposure areas, for example HAZMAT, in order to monitor the potential adverse effects of exposure to hazardous substances and to monitor the effectiveness of risk control strategies.
- 14.13 Quit smoking program
- 14.13.1 The Department shall offer and operate a voluntary quit smoking program for firefighters comprising:
- 14.13.1.1 Information and advice; and
- 14.13.1.2 Support by way of confidential phone counselling, including follow-up calls within two days, two weeks, six months and twelve months of a firefighter's quit date; and
- 14.13.1.3 a four-week Nicotine Replacement Therapy kit for firefighters who smoke over 10 cigarettes a day, at no cost to the firefighter, with an additional 4 weeks of therapy available for purchase by the firefighter through the Department at cost.

#### Diagnosis on medical certificates

- 14.14 In recognition of the improved health monitoring arising out of the Health and Wellness Checks, and notwithstanding sub-clause 23.3 of the *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011* and sub-clause 16.3 of the *Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011*, FRNSW will no longer require the inclusion of a diagnosis on medical certificates.
- 14.15 Notwithstanding sub-clauses 23.5 of the *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011* and sub-clause 16.4 of the *Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011*, where FRNSW is concerned about a firefighter's fitness for duty following a period of sick leave it shall refer the firefighter for a fitness for duty assessment in accordance with Annexure B of this Award.
- 14.16 Notwithstanding sub-clause 23.6 of the *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011* and sub-clause 16.5 of the *Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011*, which requires a firefighter who has been absent for more than 28 days to be cleared by the Brigades Medical Officer, such clearance shall be in accordance with Annexure B of this Award.
- 14.17 The parties agree to implement the Health and Wellness Program in circumstances in which a member of the Industrial Relations Commission will oversight their progress and set appropriate time frames, ~~subject to the proviso that the parties specifically agree to the inclusion of a sub-clause in the following terms:~~

~~14.18~~ 14.18 A firefighter who fails to meet the prescribed ~~health~~Health and ~~fitness~~Wellness standards will be given an appropriate period of time, as determined on medical advice, to achieve the level of health and fitness required. Subsequently, a firefighter who fails the medical reassessment or who is deemed on medical advice not capable of regaining or maintaining an acceptable level of fitness will be rehabilitated to another position in accordance with FRNSW policy.<sup>22</sup>

~~14.319~~ 14.319 Negotiations will also commence on a proposed return to work policy, which shall include agreed alternative duties provisions. The content of any FRNSW policy in this regard will form part of health and fitness negotiations.

~~14.420~~ 14.420 Health and ~~fitness~~Wellness standards will be subject to negotiation and agreement, but shall apply to all firefighters with no distinction based upon rank.

#### **PART D – GRIEVANCE MECHANISM, ANTI-DISCRIMINATION AND AREA, INCIDENCE, DURATION AND PARTIES BOUND**

##### **CLAUSE 15 - GRIEVANCE MECHANISM**

If an issue gives rise to a dispute it shall be dealt with in accordance with the Dispute Avoidance Procedures in Clause 35 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011.

##### **CLAUSE 16 - ANTI-DISCRIMINATION**

16.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the Industrial Relations Act 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

16.2 It follows that in fulfilling their obligations under clause 15 of this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfillment of these obligations for the parties to make an application to vary any provision of this Award, which by its terms or operation, has direct or indirect discriminatory effect.

16.3 Under the Anti-Discrimination Act 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

16.4 Nothing in this clause is taken to affect any conduct or act which is specifically exempted from anti-discrimination legislation; offering or providing junior rates of pay to persons under 21 years of age; any act or practice of a body established to propagate religion which is exempted under section 56(d) of the Anti-Discrimination Act 1977; and/or a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.

16.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

##### **CLAUSE 17 - LEAVE RESERVED**

Leave is reserved to the parties generally to apply as they may be advised in respect of:

17.1 any adjustment under Commonwealth legislation governing superannuation which alters preservation rights at age 60 or in the event that any legislative change necessary for the implementation of this Award does not occur;

~~17.2 — the definition of “actual retained earnings” at Clause 3; and~~

~~17.3 — Clause 9 — Rehabilitation and Retraining and Lump Sum Payments for Permanent Firefighters who suffer Partial and Permanent Incapacity.~~

**CLAUSE ~~18~~17 - AREA, INCIDENCE, DURATION AND PARTIES BOUND**

18.1 This Award shall apply to all permanent firefighters and retained firefighters, as defined in Clause 3, Definitions, who are employed by FRNSW.

18.2 This Award shall rescind and replace the Crown Employees (~~NSW Fire Brigades and Rescue NSW~~ Firefighting Staff Death and Disability) Award ~~2009~~2012 published ~~26 June 2009 (3685~~ October 2012 (374 IG 3641271).

18.3 This Award shall be binding upon the FBEU and FRNSW.

18.4 This Award shall take effect on and from 22 March ~~2012~~2014 and shall remain in force until ~~21~~24 March ~~2014~~.

2017.

**ANNEXURE A**

**PARTIAL AND PERMANENT INCAPACITY BENEFITS PAYMENT SCALE**

<b>Age at termination</b>	<b>Benefit as multiple of salary</b>
20	8.33
21	8.22
22	8.11
23	7.99
24	7.87
25	7.75
26	7.62
27	7.49
28	7.35
29	7.21
30	7.07
31	6.92
32	6.76
33	6.61
34	6.44
35	6.28
36	6.11
37	5.93
38	5.75
39	5.56
40	5.36
41	5.16
42	4.96
43	4.75
44	4.53
45	4.30
46	4.07
47	3.83
48	3.59
49	3.34
50	3.08
51	2.81
52	2.53
53	2.25
54	1.95
55	1.65
56	1.34
57	1.02
58	0.69
59	0.35
60	0.00

## ANNEXURE B

### AGREED MECHANISM FOR ASSESSMENT OF ENTITLEMENT TO BENEFITS PROVIDED BY FRNSW PURSUANT TO SUBCLAUSE 13.1

1. This mechanism will not apply, and a firefighter may not therefore be considered partially and permanently incapacitated, whilst ever a firefighter has a workers compensation claim in dispute. Conversely, this mechanism will apply in all other instances listed at point 2.
2. The procedures set out at points 3 to 6 inclusive will apply if:
  - a) FRNSW has reason to believe that:
    - i) a firefighter may be unfit for duty, permanently or otherwise, and that firefighter disagrees; or
    - ii) it may be necessary to impose certain medical/physical conditions or restrictions on a firefighter, permanently or otherwise, and that firefighter disagrees with the need for some or all such conditions or restrictions; or
  - b) A firefighter has reason, supported by medical information, to believe that:
    - i) the firefighter may be unfit for duty, permanently or otherwise, and FRNSW disagrees; or
    - ii) it may be necessary to impose certain medical/physical conditions or restrictions on the firefighter, permanently or otherwise, and FRNSW disagrees with the need for some or all such conditions or restrictions; or
  - c) A firefighter has already been assessed as defined at points 7(b), 7(c) or 7(d) and subsequently obtains more contemporary information which suggests that they may be fit or that their requirements or restrictions should be changed, and FRNSW disagrees.
3. If the medical assessment is initiated by FRNSW at point 2(a) then FRNSW will advise the firefighter in writing of their need to undergo an immediate health assessment by a medical practitioner nominated by FRNSW, and its reason(s) for such referral.
4.
  - a) If FRNSW believes at any point in time that a permanent firefighter's condition is such that by remaining on-duty he/she may endanger themselves, their colleagues or the public, FRNSW will, having regard to the firefighter's circumstances, either assign appropriate alternative duties for the firefighter or direct the firefighter on leave (which is not to be deducted from any of the firefighter's leave balances) pending the determination of their condition in accordance with this mechanism. A permanent firefighter who is stood down from their ordinary duties in accordance with this point will continue to receive "full pay", as defined by the Award, until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this Clause, or the assessing medical practitioner reports pursuant to point 7 below.
  - b) If FRNSW believes at any point in time that a retained firefighter's condition is such that by continuing to attend emergency incidents he/she may endanger themselves, their colleagues or the public, FRNSW will allow the firefighter to respond to their station, but not the incident, for all calls received by their brigade, and to attend all drills pending the determination of their condition in accordance with this mechanism. A retained firefighter who is placed on non-response duties in accordance with this point will continue to be permitted to attend the station for calls and drills until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this Clause, or the assessing medical practitioner reports pursuant to point 7 below.

5. Whether the medical assessment is initiated by FRNSW at point 2(a) or a firefighter at point 2(b), FRNSW will arrange for a reasonable appointment for the firefighter as soon as possible, if not with FRNSW's preferred medical practitioner then with some other suitable medical practitioner, and will notify both the firefighter and the assessing medical practitioner in writing setting out:
  - a) the time, date and location of the appointment;
  - b) the inherent requirements of the firefighter's ordinary duties and the firefighter's typical work environment(s);
  - c) the health-related issue(s), if any, which FRNSW believes may be affecting work performance;
  - d) the manner in which it is believed work performance has been/is being and/or may be affected, including evidence where available;
  - e) any specific question(s) from FRNSW. It will not be sufficient to simply request an assessment of a firefighter's "fitness to continue" or assume such question(s) would be inferred by the assessing medical practitioner from the general background information provided; and
  - f) a summary of all relevant documents in checklist format.
6. The assessing medical practitioner should take into account any and all relevant material supplied by FRNSW, the firefighter and/or the firefighter's own medical practitioner(s). FRNSW will ensure that any material provided to the assessing medical practitioner will at the same time also be provided to the firefighter and/or the medical practitioner(s) nominated by the firefighter.
7. The assessing medical practitioner's report, which will be in writing and provided to both FRNSW and the firefighter, should conclude that the firefighter is, in that medical practitioner's opinion, either:
  - a) fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
  - b) fit to perform the firefighter's ordinary duties with specified requirements or restrictions; or
  - c) temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
  - d) temporarily unfit to perform any FRNSW duties; or
  - e) permanently unfit to perform the firefighter's ordinary duties.
8. FRNSW will write to the firefighter within 7 days of receipt of the assessing medical practitioner's report stating that it has either:
  - a) wholly accepted the assessing medical practitioner's report; or
  - b) partially accepted the assessing medical practitioner's report, together with the reason(s) for its non-acceptance of the relevant part(s); or
  - c) accepted none of the assessing medical practitioner's report and its reasons for same.
9. A firefighter may request by way of report that the Commissioner review the FRNSW determination at point 8 within 14 days of receipt of that written determination. A firefighter who makes such a request shall then be allowed 28 days, or such additional time as the Commissioner may allow, in order for a medical practitioner of the firefighter's choosing to:

- a) review all previous reports and documentation relating to the matter; and
- b) confer with a FRNSW-nominated medical practitioner with a view to maximising the areas of agreement and minimising any areas of disagreement between them. In order to facilitate such conferences, FRNSW and the firefighter must, by no later than close of business on the next working day following the firefighter's request for a review, exchange the contact details of their respective nominated medical practitioners and in the case of the firefighter, written authorisation for their nominated medical practitioner to discuss their medical information with the FRNSW-nominated medical practitioner; and
- c) produce a report (and, if the FRNSW-nominated medical practitioner is agreeable, a joint report) of their conclusions.

The Commissioner will consider all previous reports and documentation relating to the matter, together with any additional information (including the medical practitioner's report at (c) above) submitted by the firefighter, and will within 14 days supply the firefighter concerned with a written and final FRNSW determination of the matter.

- 10. If the firefighter does not agree with the Commissioner's determination at point 9 then the matter may be referred to the Industrial Relations Commission (the Commission) for final determination of the matter, i.e. whether the firefighter is;
  - a) fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
  - b) fit to perform the firefighter's ordinary duties with specified requirements or restrictions; or
  - c) temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
  - d) temporarily unfit to perform any FRNSW duties; or
  - e) permanently unfit to perform the firefighter's ordinary duties.
- 11. Where a dispute cannot be settled by conciliation, the parties agree in principle that the preferred method of adjudication will be by the Commission utilising the 'Bluescope model'. The 'Bluescope model' will be adopted except where the Commission orders otherwise or where one of the parties elects not to use the Bluescope model and notifies the other party of this election as soon as practicable before or at the time the dispute is notified to the Commission.
- 12. A firefighter who is found to be temporarily unfit as per points 7(c) or 7(d) will be given the appropriate period of time, as advised by the assessing medical practitioner, necessary for the firefighter to return to their ordinary duties.
- 13. A firefighter who fails to return to their ordinary duties within the appropriate period of time, or within six months from the date they last performed their ordinary duties (whichever occurs first) will be referred for medical re-assessment.
- 14. In the event of a dispute, determination as to whether a firefighter's permanent incapacity is the result of an on duty injury or an off duty injury will be made by Suncorp as soon as possible following confirmation of the firefighter's permanent incapacity or, in the event that Suncorp is no longer able or willing to do so, by some other suitably qualified independent assessor agreed between the parties, provided that any dispute as to the appointment of an independent assessor or the entitlement of a firefighter suffering partial and permanent incapacity may be referred to the Industrial Relations Commission for final determination.

15. FRNSW will bear the cost of any assessment conducted by a medical practitioner pursuant to points 5, 6 and 7, and of any independent assessment conducted at point 13, provided that in the case of any review conducted at points 9 and 10 (only), the firefighter and FRNSW will each be responsible for the costs of their own nominated medical practitioner.
16. To avoid doubt, the provision within subclauses 9.5, 9.6, 9.7 and 12.3 of the Award whereby the FBEU is to be informed “unless the firefighter expressly declines to agree to the FBEU being informed” is intended to allow the firefighter to seek the FBEU’s advice before authorising or agreeing to any course of action or signing any document associated with those subclauses and unless the firefighter does expressly decline to agree to the FBEU being informed then FRNSW will neither expect nor allow a firefighter to authorise or agree to any course of action nor sign any document associated with those subclauses until such time as the FBEU has been notified in writing and been given adequate opportunity to confer with the firefighter.
17. A firefighter who fails to comply with a reasonable direction to attend and participate in a medical assessment under this mechanism may be subject to disciplinary action.
18. A firefighter who has been determined as suffering partial and permanent incapacity may at any time elect to be assessed by the Death and Disability Superannuation Fund for total and permanent incapacity, in which case FRNSW will make all reasonable efforts to assist the Fund in concluding such assessment as soon as practicable.
19. The employment of a firefighter who is determined as suffering partial and permanent incapacity will be terminated in accordance with subclause 9.7 of the Award in the case of a permanent firefighter, or subclause 12.3 of the Award in the case of a retained firefighter, or otherwise upon such firefighter’s consent or request.
20. For the purpose of this mechanism, “ordinary duties” means the full range of work that was usually performed by the firefighter immediately prior to suffering the condition, illness or injury that caused them to cease to perform, in whole or in part, such work.

ANNEXURE C

TEMPLATE LETTERS FOR THE PURPOSES OF SUBCLAUSE 13.1 AND ANNEXURE B

Letter 1 – Arrangement of medical assessment

Date

Dear Firefighter [Station Officer/Inspector etc],

I write in relation to your fitness to continue as an operational firefighter with Fire & Rescue NSW (the Service).

I have reason to believe that you may be permanently unfit for duty as an operational firefighter with the Service.

As such, you will be required to undergo a health assessment by a medical practitioner nominated by the Service.

The Service will be in contact with you within the next fourteen (14) days to confirm the time, date and location of your appointment along with the following details in a checklist format:

- a) the inherent requirements of your ordinary duties and your typical work environment(s);
- b) the health-related issue(s), if any, which the Service believes may be affecting work performance;
- c) the manner in which it is believed work performance has been/is being and/or may be affected, including evidence where available; and
- d) any specific question(s) from the Service.

You may also wish to provide the assessing medical practitioner with any relevant material you may have or material from your own medical practitioner(s).

I understand this may be a difficult time for you and therefore take this opportunity to remind you of the services available, including:

- FRNSW Chaplain, XXX 0418 869 280
- FRNSW Employee Assistance Program (EAP) 1300 630 364
- FRNSW Wellbeing Coordinator 0448 295 725
- FRNSW Health & Safety Branch 9265 2800.

The Service intends to notify the Fire Brigade Employees' Union of NSW of the above; unless you advise that you would not like this notification to occur. If this is the case, please confirm this in writing by [date (7 days from date this letter)]

Should you have any queries or concerns regarding this matter, please contact XXX, HR Consultant on XXX or XXX@fire.nsw.gov.au.

Yours sincerely

**Director**  
**Human Resources**

## Letter 2 – Result of medical assessment

Date

Dear Firefighter [Station Officer/Inspector etc],

Fire & Rescue NSW (FRNSW) writes in relation to your recent medical assessment with Dr XXX on DATE. Fire & Rescue NSW has received the medical assessment report of Dr XXX. A copy of the report is attached for your information.

After careful consideration FRNSW has decided to wholly accept the report of Dr XXX, who has concluded that you are permanently unfit to perform your ordinary duties. You are therefore considered, for the purposes of the *Death and Disability Award* (the D&D Award), to have suffered partial and permanent incapacity (PPI) as of the date of this letter. This may result in the progressive reduction from this date onward of the D&D benefit payable to you in the event of your medical retirement.

FRNSW has also decided that your incapacity is the result of an off-duty [on-duty] injury, as defined by the D&D Award. This may result in a lesser [higher] D&D benefit being payable than would otherwise be the case (ie. If your incapacity was determined to be the result of on-duty [off-duty] injury).

You may request a review of either or both decisions.

To request a review of the decision to wholly accept the doctor's medical report, you must advise FRNSW of this and provide any additional information that you would like taken into account within 14 days of this letter.

A medical practitioner of your choosing will then be allowed 28 days to:

- a) review all previous reports and documentation relating to the matter; and
- b) confer with a FRNSW-nominated medical practitioner with a view to maximising the areas of agreement and minimising any areas of disagreement between them. In order to facilitate such conferences, FRNSW and the firefighter must, by no later than close of business on the next working day following the firefighter's request for a review, exchange the contact details of their respective nominated medical practitioners and in the case of the firefighter, written authorisation for their nominated medical practitioner to discuss their medical information with the FRNSW-nominated medical practitioner; and
- c) produce a report (and, if the FRNSW-nominated medical practitioner is agreeable, a joint report) of their conclusions.

The Commissioner will then consider all previous reports and documentation relating to the matter, together with any additional information you may supply, and will within 14 days, provide you with a written and final FRNSW determination.

To request an independent review of the decision that your incapacity is the result of an off-duty [on-duty] injury, you must submit the enclosed form to FRNSW within 7 days of the date of this letter.

You may also request assessment for total and permanent incapacity (TPI), in which case you should contact the Death and Disability Superannuation Fund directly.

[Remove for retained firefighters] You should be aware that while all reasonable efforts will be made to redeploy you to a suitable position, FRNSW considers the redeployment prospects of permanently incapacitated firefighters to be limited and as such, a suitable position may not be found. If you wish FRNSW to further explore your rehabilitation/retraining options with you, or you are aware of any potential employment opportunities (current or pending), please advise FRNSW as soon as possible, and in any event by no later than [date (14 days from date of this letter)].

You should also be aware that you may hereafter be medically retired if FRNSW decides that a suitable position is unlikely to be found for you, however this will not occur before you have been given adequate opportunity to consider FRNSW's decision.]

Alternatively, if you request or consent to medical retirement [If you do not request a review within 14 days] then your separation date and exit payments (including any PPI benefit) will be confirmed with you and processed within 14 days.

I understand this may be a difficult time for you and again take this opportunity to remind you of the services available, including:

- FRNSW Chaplain, XXX; 0418 869 280
- FRNSW Employee Assistance Program (EAP); 1300 630 364
- FRNSW Wellbeing Coordinator; 0448 295 725
- FRNSW Health & Safety Branch; 9265 2800.

A copy of this letter will be provided to the Fire Brigade Employees' Union on [date (7 days from date this letter)] unless you expressly tell us otherwise before that date.

Should you have any further enquiries concerning this matter, please contact XXX, HR Consultant, on XXX or [XXX@fire.nsw.gov.au](mailto:XXX@fire.nsw.gov.au).

Yours sincerely

**Director**  
**Human Resources**

### Letter 3 – Response to firefighter where no medical assessment is required

Dear Firefighter [Station Officer/Inspector etc],

I refer to your correspondence of DATE in which you advised that you have reason, supported by medical information, to believe that you are permanently unfit for your ordinary duties.

FRNSW agrees with this assessment and you are therefore considered, for the purposes of the *Death and Disability Award* (the D&D Award), to have suffered partial and permanent incapacity (PPI) as of the date of this letter. [This may result in the progressive reduction from this date onward of the D&D benefit payable to you in the event of your medical retirement.]

FRNSW has also decided that your incapacity is the result of an off-duty [on-duty] injury, as defined by the D&D Award. This may result in a lesser [higher] D&D benefit being payable than would otherwise be the case (ie. If your incapacity was determined to be the result of on-duty [off-duty] injury).

[Retained firefighters who are found to have suffered permanent incapacity will be medically retired, however this will not occur before you have been given adequate opportunity to consider FRNSW's decision.]

To request an independent review of the decision that your incapacity is the result of an off-duty [on-duty] injury, you must submit the enclosed form to FRNSW within 7 days of the date of this letter.

You may also request assessment for total and permanent incapacity (TPI), in which case you should contact the Death and Disability Superannuation Fund directly.

[Remove for retained firefighters] You should be aware that while all reasonable efforts will be made to redeploy you to a suitable position, FRNSW considers the redeployment prospects of permanently incapacitated firefighters to be limited and as such, a suitable position may not be found. If you wish FRNSW to further explore your rehabilitation/retraining options with you, or you are aware of any potential employment opportunities (current or pending), please advise FRNSW as soon as possible, and in any event by no later than DATE (14 days from date of this letter).

You should also be aware that you may hereafter be medically retired if FRNSW decides that a suitable position is unlikely to be found for you, however this will not occur before you have been given adequate opportunity to consider FRNSW's decision.]

Alternatively, if you request or consent to medical retirement [If you do not request a review within 14 days] then your separation date and exit payments (including any PPI benefit) will be confirmed with you and processed within 14 days.

I understand this may be a difficult time for you and again take this opportunity to remind you of the services available, including:

- FRNSW Chaplain, XXX; 0418 869 280
- FRNSW Employee Assistance Program (EAP); 1300 630 364
- FRNSW Wellbeing Coordinator; 0448 295 725
- FRNSW Health & Safety Branch; 9265 2800.

A copy of this letter will be provided to the Fire Brigade Employees' Union on [date (7 days from date this letter)] unless you expressly tell us otherwise before that date. Should you have any further enquiries concerning this matter, please contact XXX, HR Consultant, on XXX or [XXX@fire.nsw.gov.au](mailto:XXX@fire.nsw.gov.au).

Yours sincerely

**Director**  
**Human Resources**

**Letter 4 – Final letter and consent form**

Dear Firefighter [Station Officer/Inspector etc],

Fire & Rescue NSW writes further to its letter of DATE confirming that you are permanently unfit for your ordinary duties as a result of an on [off] duty injury.

Following receipt of your written request for [consent to] medical retirement, I have determined your separation date to be [14 days from the date of this letter].

Your partial and permanent incapacity benefit has been calculated according to Clause 9 of the Death and Disability Award as follows:

Salary [Full pay]	
Age at termination [unexpired portion of two years, or to age 60]	
Calculation	
<b>Total gross payable</b>	

Your exit payments will be:

Annual Leave	
Long Service Leave	
[Consolidated Leave]	
Etc...	
<b>Total gross payable</b>	

Unless you advise otherwise these payments will be processed on your separation date.

A copy of this letter will be provided to the Fire Brigade Employees' Union on [date (7 days from date this letter)] unless you expressly tell us otherwise before that date.

Should you have any further enquiries concerning this matter, including a possible alternative separation date, please contact XXX, HR Consultant, on XXX or [XXX@fire.nsw.gov.au](mailto:XXX@fire.nsw.gov.au).

Yours sincerely

**Director  
Human Resources**

**Partial and Permanent Incapacity Benefit pursuant to the Crown Employees (NSW Fire and Rescue Firefighting Staff Death and Disability) Award 2012**

Confirmation of benefit form

1. I confirm I made contributions to the NSW Fire Brigades Death and Disability Superannuation Fund as provided for in clause 5 of the *Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2014*.
2. As set out in its correspondence of xx, Fire and Rescue NSW have confirmed I am no longer fit for my ordinary duties.

3. Fire and Rescue NSW proposes that my employment be terminated on DATE.
4. On DATE, Fire and Rescue NSW confirmed my Partial and Permanent Incapacity on[off]duty benefit to be \$X,XXX.
5. I understand that should I receive a Total and Permanent Incapacity (TPI) benefit in the future Fire and Rescue NSW may seek full recovery of any PPI benefit paid.

Name:

Signature:

Date:

Please return to fax number/name etc.

## ANNEXURE D

### FIRE AND RESCUE NSW HEALTH AND WELLNESS PROGRAM

#### Objectives

To promote health and wellness of firefighters and to assist them in meeting the occupational requirements of their job.

To provide practical support, education and assistance to firefighters through structured health and wellness programs.

#### Benefits for the firefighter

A compulsory health assessment every 3 years or as recommended on medical advice.

A comprehensive individual report

Access to individual health and wellness counselling sessions

Access to health and wellness resource materials

Identification of negative lifestyle habits and risks

Identification of some medical conditions

Early intervention and management of medical conditions

Health statistics over the lifetime of career as a firefighter

Decreased risk of death, injury or disability from disease

Increased ability to cope with the physical and emotional stresses of firefighter duties

Heightened job performance and satisfaction.

#### General benefits for Fire and Rescue NSW (FRNSW)

Supplementary to saving lives, improving performance and achieving compliance with Workplace Health and Safety legislation and Australian and international standards, it is anticipated that the Health and Wellness Program will make a significant positive contribution to:

the number and cost of worker's compensation and death and disability claims

the number and cost of rehabilitation cases

payroll costs due to sick or injured workers

identification of negative health factors (work-related or other) for FRNSW.

#### Outcomes

A healthy and fit workforce.

Increased capacity to cope with the physical and psychological demands of firefighting.

Decreased risk of injury, illness and disease, leading to a reduction in the number and cost of health related absences, workers compensation claims/premiums and Death and Disability claims.

Compliance with relevant Work Health and Safety legislation and Australian Standards.

Identification and analysis of trends for the purpose of developing firefighter specific health and safety interventions.

#### Focus Areas

Support Program - Introduction of a comprehensive program designed to support firefighters in their efforts to improve personal health outcomes.

Health Assessment Program - Introduction of a firefighter specific health assessment program designed to identify significant health issues.

#### Principles

Broad consultation with all stakeholders in the development and delivery of programs is critical to success.

Collaboration with international, national and state initiatives is essential for a sustained and systematic approach to health promotion and injury/disease prevention.

Linking relevant programs and taking a comprehensive/holistic approach to health promotion and injury/disease prevention will provide maximum impact.

Long term 'capacity building' will prolong and multiply health gains for both firefighters and FRNSW.

#### Key Strategies

##### Infrastructure

Develop the physical and organisational infrastructure needed to implement program components. This includes support structure (eg. health/wellness and return to work professionals), related systems and procedures (eg. data management, pathways for rehabilitation), resources (eg. educational materials), and coordinated links with other relevant agencies and initiatives (eg. NSW Police WellCheck Program, Railcorp Program and Ambulance Service of NSW Health and Wellness Program).

##### Education

Increase awareness and understanding of general and firefighter specific health issues and provide the necessary skills to take ownership of personal health outcomes. Focus on physical activity, nutrition, smoking cessation, occupational and environmental exposures, and critical incident stress as they relate to firefighter performance, mental health, injury prevention and chronic disease development (cardiovascular disease, cancer, diabetes, etc).

##### Environments

Create work environments that promote and encourage healthy lifestyle behaviours (a 'healthy' organisational culture). Focus on provision of healthy lifestyle education. This strategy should also include identifying and encouraging the development of healthy non-work environments (eg. social sport participation; physically active families).

##### Monitoring/Evaluation

Monitor health outcomes over time to determine efficacy of programs. Including broad surveys of lifestyle changes (eg. physical activity patterns), monitoring of injury and illness trends, participation rates for health and wellness activities, and periodic health assessment and 'Return to Work' program outcomes.

### **Health and Wellness Checks**

The implementation of the Health and Wellness Checks will help to ensure:

that firefighters are medically and physically capable of performing their required duties

that the risk of injury or illness is reduced through constant monitoring of health trends and the implementation of focussed health interventions

that FRNSW satisfies its statutory obligations under all relevant legislation

the provision of current and accurate health/medical information for the purposes of resource allocation and planning

The Health and Wellness Checks include:

Lifestyle questionnaire and occupational history (including exposures);

Medical examination (primary focus on cardiovascular, respiratory and musculoskeletal systems);

Pathology testing (general health markers; eg lipid profile, blood glucose level);

Urinalysis;

Twelve lead ECG;

Cardiac Risk Profile (risk score based on Framingham study);

Spirometry (lung function);

Vision (near and distant);

Audiometry (hearing) as indicated; and

Other medical assessments as indicated

### **Fitness Assessment**

Flexibility;

Muscular strength and endurance; and

Cardiovascular Fitness

The Health and Wellness Checks shall be conducted by a local medical practitioner nominated by the firefighter having regard to the most practical and economical option. In most cases, an assessment once every three years should be adequate but, in cases of identified health risk, they may be scheduled more frequently dependent on the health risk as advised by the nominated medical practitioner.

The cost of Health and Wellness Checks conducted as part of this program, along with all other aspects of the Health and Wellness Program (as contained in this Annexure) unless otherwise stated, will be met by FRNSW. This includes any referrals for other assessments arranged by the nominated medical practitioner for the purposes of determining occupational health risk.

Attendance at a nominated medical practitioner for the purpose of having a Health and Wellness Check will occur in or be considered work time. If an appointment with a medical practitioner cannot be made during work time within the firefighter's allocated month then, subject to FRNSW approval, the firefighter may either delay the Health and Wellness Check so that it may be scheduled in work time or schedule the appointment outside of work time, in which case time spent at the appointment shall be paid at overtime rates. If transportation is not provided by FRNSW to attend the Health and Wellness Check, reimbursement of all reasonable transport costs and travel time at single rates will be made to the firefighter attending.

The firefighter (only) will receive a confidential and comprehensive assessment report outlining clinical findings, providing comparative data and recommended health interventions including referrals where indicated. All assessment information will remain private and confidential consistent with the (NSW) *Health Records and Information Privacy Act 2002*. The firefighter will forward to FRNSW a determination in relation to the firefighter's fitness for duty (as set out in Point 7 of Annexure B of this Award). FRNSW shall also provide a voluntary health counselling session with the medical practitioner to explain the report and offer advice on further interventions.

Where a medical issue is identified during the Health and Wellness Checks, the health risk will be assessed against the inherent requirements of the job that the firefighter is required to do (safety critical). A firefighter who fails to meet the prescribed health and wellness standard will be given an appropriate period of time, as determined on medical advice, to achieve the level of health and fitness required. Subsequently, a firefighter who fails the medical reassessment or who is deemed on medical advice not capable of regaining or maintaining an acceptable level of fitness will be rehabilitated to another position in accordance with FRNSW policy.

Whilst the aim of the Support Program is to provide general health and wellness interventions, firefighters may make arrangements to discuss the results of the assessment with FRNSW personnel with a view to developing more focused interventions.

FRNSW shall not cover the cost of treatment for non-compensable injuries or illness. The treatment cost associated with compensable injuries or illness will be addressed through the Workers' Compensation system.

#### Support Program

FRNSW shall maintain a comprehensive support program, developed in consultation with the FBEU. The aim of the Support Program is to provide general health and wellness interventions. The Support Program may also provide services that complement the FRNSW 'Return to Work' process. Program services may include:

health and wellness counselling and advice;

lectures and seminars on health and wellness related topics;

health and wellness resource material