

**CROWN EMPLOYEES (NSW FIRE BRIGADES RETAINED FIREFIGHTING STAFF)  
AWARD 2004**

**INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES**

Application by the NSW Fire Brigade Employees' Union

IRC Matter No. 2602 of 2004

Before the Commission

**AWARD**

**PART A**

**Clause 1 - Introduction**

- 1.1 This Award shall be known as the "Crown Employees (NSW Fire Brigades Retained Firefighting Staff) Award 2004".
- 1.2 This Award regulates the rates of pay and conditions of employment for employees covered by this Award.

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**PART A**

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## **PART B**

### Monetary Rates

- Table 1 - Payment Entitlement Codes
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### **3. Basic Wage**

- 3.1 This Award, in so far as it fixes rates of pay, is made by reference and in relation to a basic wage for adults of \$121.40 per week.
- 3.2 The said basic wage may be varied by the Commission under subclause 2 of Clause 15 of Division 4 of Part 2 of Schedule 4, Savings, Transitional and other provisions, of the *Industrial Relations Act 1996*.
- 3.3 A reference in this Award to the adult basic wage is to be read as a reference to the adult basic wage currently in force under the said clause 15.

### **4. Definitions**

"**Brigade**" for the purposes of this Award means any individual brigade of the NSW Fire Brigades constituted under the *Fire Brigades Act 1989*.

"**Commissioner**" means Commissioner of the Department holding office as such under the *Public Sector Employment and Management Act 2002*.

"**Department**" means NSW Fire Brigades established by the *Fire Brigades Act 1989* and as a Department under Schedule 1 of the *Public Sector Employment and Management Act 2002*.

"**Employee**" means a person classified by the Department as a Retained Firefighter and appointed as a Volunteer Firefighter pursuant to the provisions of the *Fire Brigades Act 1989*.

"**Fire District**" has the same meaning as in the *Fire Brigades Act 1989*.

"**GSA**" (Greater Sydney Area) means within the area bounded by the Local Government areas of Pittwater, Hornsby, Baulkham Hills, Hawkesbury, Penrith, Liverpool, Wollondilly, Campbelltown and Sutherland.

"**Incident**" means a fire call or any other emergency incident attended by the NSW Fire Brigades.

"**PEO**" means the Public Employment Office.

**"Retainer"** means the relevant amount set out at Entitlement Codes A, B, C, D, E or F paid per month to employees in accordance with their classification, less \$25.

**"Service"** for the purposes of determining leave entitlements, means continuous service.

**"Special Leave Without Pay"** means a period of approved unpaid leave during which the employee's retainer shall be unaffected.

**"Substantial Meal"** means a meal similar in standard to that provided by domestic airlines to inflight passengers travelling interstate economy class.

**"Union"** means the New South Wales Fire Brigade Employees' Union.

## 5. Intention

5.1 The intention of this Award is to regulate the rates of pay and conditions of employment for employees covered by this Award.

## 6. Rates of Pay and Allowances

6.1 Rates of pay and retainers shall be paid in accordance with the Entitlement Codes for an employee's classification, as prescribed in subclause 6.3.1. The monetary amounts corresponding to the Entitlement Codes are as set out in Table 1 - Payment Entitlement Codes, of Part B, Monetary Rates.

6.2 The retainers include a loading in compensation for:

6.2.1 Annual leave loading.

6.2.2 The driving and operating of all vehicles operated by appropriately qualified employees as at 30 September 1999 and rescue and hazmat vehicles outside the GSA and the Newcastle, Lake Macquarie, Wollongong, Shellharbour, Gosford, Wyong and Blue Mountains Local Government Areas. The operation of any other vehicles shall be by agreement between the Union and the Department.

6.2.3 Rescue, Cordage, Hazmat & Unit Trainer capabilities and CBT qualifications required to be held under subclause 6.3.

## 6.3 Rates of Pay and Classifications

6.3.1 Entitlement Codes

Classification	Type of Payment and Entitlement Code		
	Retainer per month	Rate of Pay 1st Hour	Each subsequent half-hour or part thereof
Captain A	A	G	I
Captain B	B	G	I
Deputy Captain A	B	H	J
Deputy Captain B	C	H	J
Firefighter A	D	H	J
Firefighter B	E	H	J
Firefighter C	F	H	J

- 6.3.2 All employees shall commence employment in the classification of Retained Firefighter and shall be paid the Level C retainer rate.
- 6.3.3 Progression of Retained Firefighters from Level C retainer payment to Level B retainer payment shall be subject to the satisfactory completion of:
  - 6.3.3.1 12 months service from the date of commencement of employment as a retained firefighter; and
  - 6.3.3.2 the training and/or training competencies specified, by the Commissioner on the advice of the Training Review Committee, for such progression.
- 6.3.4 Progression of Retained Firefighters from Level B retainer payment to Level A retainer payment shall be subject to the satisfactory completion of:
  - 6.3.4.1 24 months service from the date of commencement of employment as a retained firefighter; and
  - 6.3.4.2 the training and/or training competencies specified, by the Commissioner on the advice of the Training Review Committee, for such progression.
- 6.3.5 Progression from Retained Firefighter to Deputy Captain or Captain, or from Deputy Captain to Captain shall in each case be subject to a vacancy and shall be determined solely on the basis of competitive merit selection. Selection Committees shall be constituted in accordance with the Recruitment and Employment Guidelines and Procedures of the N.S.W. Public Service.
- 6.3.6 Progression of Deputy Captains from Level B retainer payment to Level A retainer payment shall be subject to the satisfactory completion of:
  - 6.3.6.1 12 months service from the date of appointment as Deputy Captain; and
  - 6.3.6.2 the training and/or training competencies specified, by the Commissioner on the advice of the Training Review Committee, for such progression.
- 6.3.7 Progression of Captains from Level B retainer payment to Level A retainer payment shall be subject to the satisfactory completion of:
  - 6.3.7.1 12 months service from the date of appointment as Captain; and
  - 6.3.7.2 the training and/or training competencies specified, by the Commissioner on the advice of the Training Review Committee, for such progression.
- 6.3.8 All employees who, at the date of commencement of this Award, had completed less than twelve months service shall be paid at the Level C retainer rate applying to their classification.
- 6.3.9 All employees who, at the date of commencement of this Award, had completed more than twelve months but less than two years service shall be paid at the Level B retainer rate applying to their classification.

- 6.3.10 All employees who, at the date of commencement of this Award, had completed two or more years service shall be paid at the Level A retainer rate applying to their classification.

#### **6.4 Restowing of Firefighting Vehicles**

- 6.4.1 When a firefighting vehicle at a Brigade is required to be restowed the following provisions and conditions shall apply:

- 6.4.2 With 24 Hours Notice -

- 6.4.2.1 Where at least 24 hours notice has been given, where possible, a minimum of four employees shall undertake the restow. The payment for each employee undertaking the restow of the firefighting vehicle shall be an amount calculated in accordance with the following formulae. The formulae are to be applied irrespective of whether or not the number of employees undertaking the restow is four.

- 6.4.2.1.1 Payment to be made to each employee, other than a Captain:

$$\frac{8 \times H}{y}$$

- 6.4.2.1.2 Payment to be made to a Captain, where a Captain also undertakes the restow:

$$\frac{8 \times G}{y}$$

- 6.4.2.1.3 Key:

H = The Hourly Rate of Pay specified at Entitlement Code "H" at Table 1 of Part B.

y = Total number of employees undertaking the restow, including the Captain if the Captain also undertakes the restow

G = The Hourly Rate of Pay specified at Entitlement Code "G" at Table 1 of Part B.

- 6.4.3 Restows shall, where possible, be carried out between 1800 and 2000 hours.

- 6.4.4 Without 24 Hours Notice

- 6.4.4.1 Where less than 24 hours notice has been given, the restow is to be regarded as an attendance at an incident. Each employee undertaking the restow shall be paid for all time so spent at the rate(s) prescribed for the employee's classification.

- 6.4.5 General Provisions

- 6.4.5.1 Restows of firefighting vehicles shall include road testing and pump testing and, under normal circumstances, should be completed within one hour.

6.5 Employees appointed as Unit Trainers shall receive payment at the rates prescribed at Items G and I when delivering training at normal station drills, for the duration of the drill.

## **6.6 Calculation of Payment for Duties Performed**

6.6.1 Employees shall be paid, subject to the provisions of subclause 6.6.2, for the total period of time spent performing duties, which shall be calculated as follows:

6.6.1.1 Attendance at Scheduled Weekend Training courses - the period of attendance shall be equivalent to the scheduled training hours.

6.6.1.2 Major Emergencies - Periods of attendance for the purpose of calculating payment shall be calculated having regard to the provisions of subclause 27.5.

6.6.1.3 Attendance at Zone Conferences - the period of attendance shall be equivalent to the scheduled hours of the conference.

6.6.1.4 In all other instances - employees shall be paid for the period that elapses from the time the employee signed on in the occurrence book at the employee's station, until the time such employee signs off in the occurrence book at the employee's station.

6.6.2 The minimum periods of payment shall be as follows:

6.6.2.1 Attendance at an incident, hazard reduction, and unit training - a minimum payment of one hour. All subsequent time thereafter shall be paid to the half hour.

6.6.2.2 Regular drills - a minimum payment of two hours.

6.6.2.3 All other authorised duties (excepting Travelling Time) - a minimum payment of one hour. All subsequent time to be paid to the minute.

6.6.2.4 Travelling time - where an employee is entitled to travelling time in terms of this Award, all such time shall be paid to the minute.

6.6.2.5 Standing By - where an employee performs stand by duties in accordance with subclause 6.8, such employee shall receive a minimum payment of one hour. All subsequent time thereafter shall be paid to the minute.

6.6.2.6 Attendance at scheduled weekend training courses and zone conferences - a minimum payment of eight hours per day spent in attendance.

## **6.7 Attendance at Authorised Meetings and Other Duties**

6.7.1 Where an employee is required to attend meetings or to perform other authorised duties, payment shall be made at the appropriate rate of pay for the employee's classification for the time spent in attendance. Such authorised duties include, but are not limited to, those duties that are set out in Table 3 - Authorised Duties, of Part B, Monetary Rates.

6.7.2 Employees seeking to attend meetings and/or perform duties in accordance with subclause 6.7.1 which are not referred to in the said Table 3 must receive authorisation from the relevant Captain, Inspector or higher ranking officer prior to the performance of such duties.

## **6.8 Standing By for Non-Available Staff**

- 6.8.1 Where an employee is required to stand by with a brigade to fill a vacancy created through the non-availability of firefighting staff, retained or permanent, such employee shall be paid at the rate prescribed at Entitlement Code L of Table 1 of Part B of this Award for the period which elapses from the time the employee signed on in the occurrence book of the stand by station, until the time such employee signs off in the occurrence book of the stand by station. Provided that employees who perform stand by duties in accordance with this subclause shall not attract additional payment under this Clause for attendance at incidents or performing authorised duties or drills during the period of the stand by.
- 6.8.2 Employees who stand by at a station other than their own shall be paid the appropriate rate per hour prescribed for the employee's classification for the duration of the forward and return journeys between the employee's station and the location of the stand-by. All such time shall be paid to the minute.
- 6.8.3 Where it is necessary for an employee to use the employee's private vehicle to perform stand by duties, such employee shall be paid the rate per kilometre prescribed at Entitlement Code "K" of Table 1 of Part B for the forward and return journeys between their residence and their station, and the forward and return journeys between their station and the location of the stand-by.

## **6.9 Overtime**

- 6.9.1 Where an employee works in excess of ten (10) consecutive hours, such employee shall be paid at overtime rates for the hours worked in excess of ten (10). Provided that the provisions of this subclause shall not apply to employees receiving payment under either Clause 27, Attendance at Major Emergencies, or subclause 6.8, Standing By for Non-Available Staff.
- 6.9.2 Overtime shall be paid for at the rate of time and one half for the first two (2) hours and at the rate of double time thereafter, for the rate(s) prescribed for the employee's classification, provided that all overtime shall be paid to the half hour in accordance with subclause 6.6.2.1.

## **6.10 Overpayments**

- 6.10.1 In cases where an employee has been overpaid, the Department shall be entitled to recover such overpayment in full. Unless the employee agrees otherwise, the maximum rate at which the overpayment can be recovered is an amount calculated on a per month basis, equivalent to 10% of the employee's gross monthly remuneration.
- 6.10.2 In all cases where overpayments have occurred, the Department shall as soon as possible advise the employee concerned of both the circumstances surrounding the overpayment and the amount involved. The Department will also advise the employee of the pay period from which the recovery of the overpayment is to commence.
- 6.10.3 The recovery rate of 10% of an employee's gross monthly remuneration referred to in subclause 6.10.1, may be reduced by approval of the Commissioner if the Commissioner is satisfied that such a rate of recovery would cause undue hardship to the employee concerned.
- 6.10.4 Where an employee's remaining period of service does not permit the full recovery of any overpayment to be achieved on the monthly basis prescribed in

subclause 6.10.1, the Department shall have the right to deduct any balance of such overpayment from any monies owing to the employee on the employee's date of termination, resignation or retirement, as the case may be.

### **6.11 Payment of Monies**

- 6.11.1 Employees shall be paid monthly.
- 6.11.2 Payments shall be made into a bank account specified by the employee, or other financial institutions acceptable to the Department and Union.

### **6.12 Payroll Deductions**

- 6.12.1 Except as provided for in subclause 6.12.2, all salary deductions shall be made in accordance with Treasury Guidelines.
- 6.12.2 Upon application by an employee, the Department shall make deductions from the employee's pay for Union subscriptions.

### **6.13 Method of Calculation of any Future Adjustment**

- 6.13.1 In the event of any future adjustment which is to be applied to the rates for Retainers, or Rates of Pay, then subject to subclause 6.13.2, the formulae in the following table shall be applied:

Type of Payment	Method of Calculation of Future Adjustment
Retainer	Add increase then round off to the nearest ten cents
Rate of Pay – 1 <sup>st</sup> Hour	Multiply by 38, add the increase, round off to the nearest 10 cents, then divide by 38 and round off to the nearest cent
Each subsequent Half-hour or part thereof	Divide the "1st hour" rate by 2 and round off to the nearest cent.

- 6.13.2 The formulae prescribed in subclause 6.13.1 are not applicable in cases where a future adjustment is a flat dollar amount per week. In the event of such a flat increase occurring, any adjustments are to be made in accordance with the provisions prescribed for the application of that increase.

## **7. Higher Duties**

- 7.1 Except in the case of a Deputy Captain performing Higher Duties as a Captain, the provisions and procedures of this clause shall apply when an employee acts up and performs Higher Duties. Provided that when a Deputy Captain performs Higher Duties as a Captain, the Deputy Captain shall be paid for such duties in terms of subclause 7.3.
- 7.2 An employee shall not be entitled to perform Higher Duties unless the employee is qualified to perform such duties.
- 7.3 An employee performing Higher Duties shall be paid for the period of relief, the difference between the employee's usual rate of pay and the minimum rate of pay for the classification in which the Higher Duties are performed. Provided that the difference between the employee's retainer and the retainer for the classification in which the Higher

Duties are performed shall not be paid unless the Higher Duties are performed for a continuous period of seven days or more.

- 7.4 In selecting employees to perform Higher Duties the following procedures shall apply:
- 7.4.1 Where the period of relief is to be less than one month, a merit based selection process need not be applied. However, the Department shall have regard to the principles of equitably sharing career development opportunities.
  - 7.4.2 Where the period of relief is to be more than one month and the need for the relief is known in advance, expressions of interest shall be called for and selection made on the basis of merit.
  - 7.4.3 Where the need for the relief is not known in advance, but it subsequently becomes known that the duration of the relief is anticipated to be for two months or more, the initial appointment shall be made in accordance with subclause 7.4.1. However, immediately following that initial appointment expressions of interest are to be called for and selection made on the basis of merit.
  - 7.4.4 Where the period of relief is anticipated to be for six months or more, expressions of interest shall be called for and selection made on the basis of merit. Unless otherwise agreed between the Department and the Union, the period of this relief shall be divided equally between the successful applicants. Provided that in dividing the periods of this relief, the minimum period shall be three months. For example, if the period of relief is eight months and five applicants are found to be suitable, only the top two applicants would perform the relief and in this case, for a period of four months each.
  - 7.4.5 For the purposes of this clause, merit shall be determined consistent with the principles and processes underlying merit based selection in the NSW Public Service.

## **7.5 Attendance at an Incident**

- 7.5.1 Any Higher Duties entitlement in terms of this clause which was actually being paid, or which should have been paid, during a period immediately prior to an incident, shall not be diminished as a consequence of the incident.
- 7.5.2 Except as provided for in 7.5.1, the only other circumstances under which a Higher Duties payment is to be made during an incident is in a case where the Captain of that Brigade does not attend the incident. In such cases, only one employee shall be entitled to a Higher Duties payment in terms of this clause and that employee shall be the employee who was in charge of the incident for the majority of the time. To avoid doubt, in the case of attendance by multiple Retained Brigades, a Higher Duties payment shall be made to the relevant employee from each Brigade whose Captain does not attend the incident.
- 7.5.3 For the purposes of 7.5.2, the term "Captain" shall also mean "Acting Captain" in cases where an employee was, during the period immediately prior to the incident, the Acting Captain in terms of this clause.

## **8. Meals and Refreshments**

### **8.1 Attendance at an Incident**

- 8.1.1 For the purposes of this clause, an "incident" also includes hazard reduction.

- 8.1.2 Where an employee attends an incident which extends for two hours or more:
- 8.1.2.1 In the GSA, Newcastle, Broken Hill, Wollongong, Gosford and Wyong Fire Districts, refreshments shall be provided no later than two hours after the start of the incident.
  - 8.1.2.2 In all other Fire Districts, refreshments shall be provided as soon as possible after two hours but no later than three hours after the start of the incident.
- 8.1.3 Where such an incident extends for four hours or more, the employee shall be provided with a substantial meal. After every subsequent four hours of attendance at such an incident, a further substantial meal shall be provided.

## **8.2 Payment in Lieu of the Provision of Refreshments/Meals**

- 8.2.1 Where refreshments are not provided in terms of subclause 8.1.2, an allowance set at Entitlement Code "N" of Table 1 of Part B, shall be paid.
- 8.2.2 Where meals are not provided in terms of subclause 8.1.3, an allowance set at Entitlement Code "M" of Table 1 of Part B, shall be paid.

## **8.3 Method of Payment of Allowances in Lieu of Refreshments/Meals**

- 8.3.1 The payments referred to in this clause shall, subject to 8.3.1.1, be made prior to or at the cessation of duty.
- 8.3.1.1 In cases where the Officer-in-Charge is not, or due to circumstances beyond his or her control does not have sufficient funds available to make payment, the employee shall be paid at the earliest practicable opportunity after the cessation of duty.

## **8.4 Calculation of Future Adjustments to Refreshments/Meal Allowances**

- 8.4.1 The allowances referred to in this clause shall be calculated as follows:
- 8.4.1.1 The amount at Entitlement Code "M" of Table 1 of Part B, is the average, rounded to the nearest five cents, of the amounts prescribed for the overtime meal allowances for breakfast, lunch and dinner under the Crown Employees (Public Service Conditions of Employment) Award 2002.
  - 8.4.1.2 The amount at Entitlement Code "N" of Table 1 of Part B, is half, rounded to the nearest five cents, of the amount at Entitlement Code "M" of Table 1 of Part B.
  - 8.4.1.3 The amounts specified in subclauses 8.4.1.1 and 8.4.1.2 shall be recalculated and shall take effect from the same date, as any adjustments made to the overtime meal allowances for breakfast, lunch and dinner allowances in the Crown Employees (Public Service Conditions Of Employment) Award 2002.

## **9. Use of Personal Transport**

### **9.1 Attendance at an incident**

9.1.1 Where it is necessary for an employee to use the employee's private vehicle to attend an incident, the employee shall be paid at the rate prescribed at Entitlement Code "K" of Table 1 of Part B, per kilometre, as follows:

9.1.1.1 The return distance from the employee's residence to the station or the distance actually travelled on the forward and return journeys to the station, which ever is the lesser; and

9.1.1.2 The return distance from the station to the incident, if it is necessary for the employee to use the employee's private vehicle to travel from the station to the incident.

### **9.2 Attendance at Authorised Meetings and Other Duties**

9.2.1 Where an employee is required to use the employee's private vehicle to attend such meetings or to perform such other authorised duties as prescribed in subclause 6.7, the employee shall be paid the rate prescribed at Entitlement Code "K" of Table 1 of Part B, of this Award per kilometre for the actual distance necessarily and reasonably travelled for that purpose.

9.2.1.1 Provided that where an employee is authorised to, and does, use his or her own private vehicle and the principal purpose of the journey is, or is as a consequence of, the transportation of the Department's equipment and/or appliances from one location to another, then such employee shall be paid the appropriate rate per hour prescribed for the employee's classification in addition to the rate per kilometre prescribed at Entitlement Code "K" of Table 1 of Part B. Provided further that, for the purposes of this subclause:

9.2.1.1.1 An employee's turnout gear shall not be regarded as equipment.

9.2.1.1.2 The hourly rate shall be paid on a basis similar to travelling time. That is, no minimum period of payment and all time to be paid to the minute.

9.2.1.1.3 Where the reason for the journey is to attend an incident, the normal provisions of this Award shall apply in lieu of the provisions of this subclause.

9.2.2 In cases where more than one employee is required to attend such meetings or to perform such other authorised duties, the total amount to be paid in terms of subclause 9.2.1, shall be limited to the amount which would be payable if the minimum number of vehicles necessary to provide the transport for the employees concerned, were used.

9.2.3 The provisions of this clause shall not apply where transport is provided by the Department.

9.2.4 Employees who are required to attend such meetings or perform such authorised duties, but do not use their private vehicle and are therefore not entitled to claim the rate prescribed at Entitlement Code "K" of Table 1 of Part B, shall be entitled

to claim travelling time and/or travelling expenses in accordance with clause 19, Travelling Compensation.

### **9.3 Restowing of Firefighting Vehicles**

- 9.3.1 Where an employee uses the employee's private vehicle to travel to the fire station for the purpose of undertaking restowing duties as prescribed in subclause 6.4, the employee shall be paid at the rate prescribed at Entitlement Code "K" of Table 1 of Part B, per kilometre for the return distance from the employee's residence to the station or the actual distance travelled, which ever is the lesser.
- 9.3.2 Where employees are required to transport a Firefighting Vehicle for servicing and/or repairs from the Station to another location, such duty shall be regarded and paid as an authorised duty.

## **10. Annual Leave**

- 10.1 On each anniversary of an employee's appointment to the Brigade, an employee shall be entitled to annual leave. Such annual leave shall accrue at the rate of four weeks for each completed year of service and shall be taken in multiples of one week.
- 10.2 An employee with less than twelve months service may, subject to approval by the Department and the requirements of subclause 10.1, take in advance leave which has accrued.
- 10.3 Wherever possible, annual leave shall be taken within six months of the date on which the leave becomes due. Provided that, in all cases, annual leave must be granted and taken within twelve months of the date on which it becomes due.
- 10.4 As far as possible, annual leave shall be granted to coincide with the employee's leave period from the employee's primary form of employment.
- 10.5 Payment for annual leave shall be calculated on the weekly average of the total amount paid by the Department to the employee for the twelve months immediately prior to the date on which leave is commenced excluding any periods of Special Leave Without Pay, unpaid leave and/or suspension. For the purposes of this subclause, "total amount" shall include all payments made to the employee by the Department, excluding payments made as compensation or reimbursement for expenses (eg. payments for meals, accommodation and for kilometres travelled).
- 10.6 An employee who is directed to return to duty in the case of an emergency whilst on annual leave, shall have any day or part thereof recredited.
- 10.7 An employee shall be paid in advance for a period of approved annual leave, providing such employee has given a minimum of six weeks written notice of the date on which the leave is to commence.

## **11. Long Service Leave**

- 11.1 An employee shall be entitled to long service leave calculated on the following bases:
- 11.1.1 For all continuous service prior to 1 April 1963, and provided that such previous service is also continuous with the employee's current service, at the rate of three months, for twenty years of service.

- 11.1.2 For all continuous service on and subsequent to 1 April 1963, in the case of an employee who has completed ten years service, two months long service leave and for each five years completed service thereafter, a further one month long service leave.
- 11.2 On termination of services, in respect of the number of years service with the Department since the employee last became entitled to an amount of long service leave, a proportionate amount on the basis of two months for ten years service.
- 11.3 In the case of an employee who has completed at least ten years service and whose services are terminated or cease for any reason, such employee shall be paid a proportionate amount calculated at the rate of two months for ten years service.
- 11.4 In the case of an employee who has completed at least five years service and whose services are terminated by the Department for any reason, other than serious and wilful misconduct, or by the employee on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the employee, such employee (or in the event of the death of the employee, the employee's estate) shall be paid a proportionate amount calculated at the rate of two months for ten years service.
- 11.5 Long service leave shall be granted subject to the convenience of the Department, as and when such leave becomes due or any time thereafter. Provided that an employee shall give at least 30 days notice in writing of the intention to take such leave.
- 11.6 Long service leave shall be paid at the rate of full pay which, for the purposes of this clause, shall mean the greater average monthly remuneration received by the employee calculated over either the preceding twelve months or five years excluding any periods of Special Leave Without Pay, unpaid leave and/or suspension. The averages referred to in this subclause shall be calculated up to and including the end of the month immediately prior to the month during which the long service leave is taken or commences, as the case may be.
- 11.7 The term "remuneration" referred to in subclause 11.6 shall include all payments made to the employee by the Department, excluding payments made as compensation or reimbursement for expenses (e.g., payments for meals, accommodation and for kilometres travelled).
- 11.8 An employee who is directed to return to duty in the case of an emergency while on long service leave shall have any day or part thereof recredited.

## **12. Military Leave**

- 12.1 Military leave may be granted to employees who are volunteer part-time members of the Defence Forces Reserves.
- 12.2 Such leave shall be available in accordance with the following provisions on a twelve month to twelve month basis, commencing on 1 July each year:
- 12.2.1 For members of the Navy Reserve - thirteen calendar days for the purpose of annual training and thirteen calendar days for the purposes of attending a school, class or course of instruction, including in a teaching capacity.
- 12.2.2 For members of the Army Reserve - fourteen calendar days for the purpose of annual training and fourteen calendar days for the purposes of attending a school, class or course of instruction, including in a teaching capacity.

- 12.2.3 For members of the Air Force Reserve - sixteen calendar days for the purpose of annual training and sixteen calendar days for the purposes of attending a school, class or course of instruction, including in a teaching capacity.
- 12.3 Where a Commanding Officer certifies in writing that it is obligatory for a member of the Reserves to attend training for a period that exceeds the leave granted under subclause 12.2, the Commissioner may grant further Military Leave up to four calendar days in any one Military Leave year.
- 12.4 Periods of approved Military Leave shall be regarded as Special Leave without Pay.

### **13. Parental Leave**

#### **13.1 Definition of Parental Leave**

- 13.1.1 For the purposes of this clause, Parental Leave is Maternity Leave, Paternity Leave or Adoption Leave.
- 13.1.2 Maternity Leave is leave taken by a female employee in connection with the pregnancy or the birth of a child of the employee. Maternity Leave consists of an unbroken period of leave.
- 13.1.3 Paternity Leave is leave taken by a male employee who becomes a parent but is ineligible to be granted either Maternity Leave or Adoption Leave, but is to be the primary care giver of a child or who wishes to share the child caring duties with their partner.
- 13.1.4 Adoption Leave is leave taken by a female or male employee in connection with the adoption by the employee of a child under the age of five years (other than a child who has previously lived continuously with the employee for a period of at least six months or who is a child or step-child of the employee or of the employee's spouse).
- 13.1.5 For the purposes of this clause, "spouse" includes a de facto spouse and a former spouse.

#### **13.2 Entitlement to Parental Leave**

- 13.2.1 An employee is entitled to a total of fifty-two weeks unpaid Parental Leave in connection with the birth or adoption of a child, as provided by this clause.
- 13.2.2 Maternity Leave - all female employees who do not have the necessary service as prescribed in subclause 13.3.1 for paid Maternity Leave, shall be entitled to unpaid Maternity Leave of up to nine weeks before the expected date of birth of the child.
- 13.2.3 Paid Maternity Leave may be granted to a female employee subject to the following conditions:
  - 13.2.3.1 The female employee has applied for Maternity Leave within such time and in such manner as herein set out.
  - 13.2.3.2 Before the expected date of birth has completed not less than forty weeks' continuous service. Paid Maternity Leave shall be for a period of nine weeks from the date Maternity Leave commences.

- 13.2.3.3 In addition to the unpaid or paid Maternity Leave referred to above, all female employees shall also be entitled to a further period of up to fifty-two weeks unpaid Maternity Leave after the actual date of birth of the child.
- 13.2.3.4 The period over which Annual and/or Long Service Leave combined with unpaid Maternity Leave, shall not exceed a total period of two years from the date of birth of the child.
- 13.2.4 Short Adoption Leave is an unbroken period of three weeks of unpaid leave, taken by an employee who does not have the necessary service for paid Adoption Leave as prescribed in subclause 13.3.1, from the time of placement of the child.
- 13.2.5 Paid Adoption Leave may be granted to an employee adopting a child subject to the following conditions:
  - 13.2.5.1 The employee has applied for Adoption Leave within such time and in such manner as herein set out.
  - 13.2.5.2 Before the commencement of Adoption Leave the employee has completed not less than forty weeks' continuous service.
  - 13.2.5.3 The employee is to be the primary care giver of the child.
  - 13.2.5.4 Paid Adoption Leave shall be for a period of three weeks of Adoption Leave or the period of Adoption Leave taken, whichever is the lesser period.
  - 13.2.5.5 Extended Adoption Leave is a further unbroken period of up to fifty-two weeks of unpaid leave in order to be the primary care-giver of the child.
- 13.2.6 Paternity Leave is a period of up to fifty-two weeks of unpaid leave taken from the date of birth of the child. It shall consist of:
  - 13.2.6.1 An unbroken period of up to one week at the time of the birth of the child or other termination of the pregnancy (short Paternity Leave).
  - 13.2.6.2 A further unbroken period in order to be the primary care-giver of the child (extended Paternity Leave).
- 13.2.7 Except as provided for in subclause 13.2.3, Parental Leave shall not extend beyond a period of one year after the child was born or adopted.

### **13.3 Length of Service for Eligibility**

- 13.3.1 A female employee is entitled to paid Maternity Leave or, in the case of both male and female employees, paid Adoption Leave only if the employee has had at least forty weeks' continuous service.
- 13.3.2 There is no minimum period of employment for eligibility for unpaid Parental Leave.
- 13.3.3 Continuous service is service under one or more unbroken contracts of employment, including:
  - 13.3.3.1 Any period of authorised leave or absence.

13.3.3.2 Any period of part-time work.

13.3.3.3 Full or part-time service within the Public Service or within a Public Sector organisation listed in the schedules attached to the *Transferred Officers Extended Leave Act 1961*, and in Appendices A and B contained in the Personnel Handbook published by the PEO.

#### **13.4 Notices and Documents required to be given to the Commissioner**

13.4.1 Maternity Leave - The notices and documents to be given to the Commissioner for the purposes of taking Maternity Leave are as follows:

13.4.1.1 The female employee should give at least eight weeks' written or oral notice of the intention to take the leave (unless it is not reasonably practicable to do so in the circumstances).

13.4.1.2 The female employee must, at least four weeks before proceeding on leave, give written notice of the dates on which the employee proposes to start and end the period of leave.

13.4.1.3 The female employee must, before the start of leave, provide a certificate from a medical practitioner confirming that the employee is pregnant and the expected date of birth.

13.4.2 Paternity Leave - The notices and documents to be given to the Commissioner for the purposes of taking Paternity Leave are as follows:

13.4.2.1 In the case of extended Paternity Leave, the employee should give at least ten weeks written or oral notice of the intention to take the leave (unless it is not reasonably practicable to do so in the circumstances).

13.4.2.2 The employee must, at least four weeks before proceeding on leave, give notice of the dates on which the employee proposes to start and end the period of leave.

13.4.2.3 The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that the employee's spouse is pregnant and the expected date of birth.

13.4.2.4 In the case of extended paternity leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:

13.4.2.4.1 Any period of Maternity Leave sought or taken by his spouse.

13.4.2.4.2 That he is seeking that period of extended Paternity Leave to become the primary care-giver of the child.

13.4.3 Adoption Leave - The notices and documents to be given to the Commissioner for the purposes of taking Adoption Leave are as follows:

13.4.3.1 In the case of extended Adoption Leave, the employee should give written or oral notice of any approval or other decision to adopt a child at least ten weeks before the expected date of placement (unless it is not reasonably practicable to do so in the circumstances).

- 13.4.3.2 The employee must give written notice of the dates on which the employee proposes to start and end the period of leave, as soon as practicable after the employee is notified of the expected date of placement of the child but at least fourteen days before proceeding on such leave.
- 13.4.3.3 The employee must, before the start of leave, provide a statement from an adoption agency or another appropriate body of the expected date of placement of the child with the employee for adoption purposes.
- 13.4.3.4 In the case of extended Adoption Leave, the employee must, before the start of such leave, provide a statutory declaration by the employee stating:
  - 13.4.3.4.1 Any period of Adoption Leave sought or taken by his or her spouse.
  - 13.4.3.4.2 The employee is seeking that period of extended Adoption Leave to become the primary care-giver of the child.
- 13.4.4 An employee does not fail to comply with this clause if the failure was caused by:
  - 13.4.4.1 The child being born (or the pregnancy otherwise terminating) before the expected date of birth.
  - 13.4.4.2 The child being placed for adoption before the expected date of placement.
  - 13.4.4.3 Other compelling circumstances.
- 13.4.5 In the case of the birth of a living child, notice of the period of leave is to be given within two weeks after the birth and the certificate of the medical practitioner is to state that the child was born and the date of birth. In the case of the adoption of a child, notice of the period of leave is to be given within two weeks after the placement of the child.
- 13.4.6 An employee must notify the Commissioner of any change in the information provided under this clause within two weeks after the change.
- 13.4.7 If required by the Commissioner, an employee who applies for Parental Leave is to give the Commissioner a statutory declaration, or enter into an agreement with the Commissioner, that for the period of the leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.
- 13.5 Continuity of Service - Parental leave does not break an employee's continuity of service, but subject to subclauses 13.5.1, 13.5.2 and 13.5.3 is not to be taken into account in calculating an employee's period of service for any other purposes.
  - 13.5.1 Any period of paid Adoption or paid Maternity Leave shall count as full service for the purposes of determining progression either within a classification or from one classification to another. However, unpaid Parental Leave shall not count as service for determining such progression.
  - 13.5.2 Adoption Leave on full pay and Maternity Leave on full pay shall count as full service for the purposes of determining all forms of leave.

- 13.5.3 Unpaid Parental Leave shall not count as service for determining any form of leave entitlement, except for Long Service Leave in cases where at least ten years of service has been completed and unpaid Parental Leave does not exceed six months.

### **13.6 Parents not to take Parental Leave at the same time**

- 13.6.1 An employee is not entitled to parental leave at the same time as his or her spouse is on parental leave.
- 13.6.2 If subclause 13.6.1 is contravened the period of parental leave to which the employee is entitled under this clause is reduced by the period of leave taken by his or her spouse. However, this subclause does not apply to short paternity leave or short adoption leave.

### **13.7 Cancellation of Parental Leave**

- 13.7.1 Before starting leave - Parental leave applied for but not commenced is automatically cancelled if:

13.7.1.1 The employee withdraws the application for leave by written notice to the Commissioner.

13.7.1.2 The pregnancy concerned terminates other than by the birth of a living child or the placement of the child concerned does not proceed.

- 13.7.2 After starting leave -

If:

- 13.7.2.1 The pregnancy of the employee or the employee's spouse terminates other than by the birth of a living child while the employee or spouse is on parental leave, provided:

13.7.2.1.1 If a child is still-born the female employee may elect to take available Sick Leave or Maternity Leave.

13.7.2.1.2 In the event of a miscarriage any absence from work is to be covered by the current Sick Leave provisions.

- 13.7.2.2 The child in respect of whom an employee is then on Parental Leave dies, or

- 13.7.2.3 The placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee is entitled to resume work at a time nominated by the Commissioner within two weeks after the date on which the employee gives the Commissioner a notice in writing stating that the employee intends to resume work and the reason for the intended resumption.

- 13.7.3 The provisions of subclause 13.7 do not affect an employee's entitlement to special maternity leave or special adoption leave.

### **13.8 Parental Leave and other Leave**

13.8.1 An employee may take any annual leave or long service leave to which the employee is entitled instead of, or in conjunction with parental leave.

13.8.2 However, the total period of leave cannot be so extended beyond the maximum period of Parental Leave authorised by this clause.

13.8.3 The maximum period of Parental Leave authorised by this clause is reduced by any period of paid sick leave taken by the employee while on Maternity Leave.

13.8.4 Any paid absence authorised by law or by an award, enterprise agreement or contract of employment is not available to an employee on Parental Leave, except if the paid absence is:

13.8.4.1 Annual Leave or Long Service Leave.

13.8.4.2 In the case of Maternity Leave - Sick Leave.

13.9 Employee and Commissioner may agree to interruption of Parental Leave by return to work -

13.9.1 An employee on Parental Leave may, with the agreement of the Commissioner, break the period of leave by returning to work for the Department, provided that:

13.9.1.1 A female employee who gives birth to a living child shall not resume duty until six weeks after the birth of the child, unless special arrangements for early return are made at the request of the female employee and supported by a certificate from a qualified medical practitioner.

13.9.1.2 A female employee who has returned to full-time duty after less than her full entitlement to maternity leave, shall be entitled to revert to maternity leave either on a full-time or part-time basis if she so elects. This election may be exercised only once and a minimum of four weeks notice (or less if acceptable to the Commissioner) of her intention to resume maternity leave must be given.

13.9.2 The period of leave cannot be extended by such a return to work beyond the maximum period of leave authorised by this clause.

### **13.10 Extension of period of Parental Leave**

13.10.1 An employee may extend the period of parental leave once only, by giving the Commissioner notice in writing of the extended period at least fourteen days before the start of the extended period. The period of leave cannot be extended by such a notice beyond the maximum period of leave authorised by this clause.

13.10.2 An employee may extend the period of Parental Leave at any time with the agreement of the Commissioner. The period of leave can be extended by such an agreement beyond the maximum period of leave authorised by this clause.

13.10.3 This subclause applies to an extension of leave whilst the employee is on leave or before the employee commences leave.

### **13.11 Shortening of period of Parental Leave**

- 13.11.1 An employee may shorten the period of Parental Leave with the agreement of the Commissioner and by giving the Commissioner notice in writing of the shortened period at least fourteen days before the leave is to come to an end.

### **13.12 Return to work after Parental Leave**

- 13.12.1 An employee returning to work after a period of Parental Leave is entitled to be employed in:
- 13.12.1.1 The classification (if possible, at the same location) held by the employee immediately before proceeding on that leave.
  - 13.12.1.2 If the employee was transferred to a safe job before proceeding on Maternity Leave - the classification (if possible, at the same location) held immediately before the transfer.
- 13.12.2 If the classification no longer exists but there are other classifications available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a classification as comparable as possible in status and pay to that of the employee's former classification.
- 13.12.3 The provisions of subclause 13.12 extend to a female employee returning to work after a period of Special Maternity Leave and Sick Leave.

### **13.13 Payment**

- 13.13.1 Payment for the nine weeks paid Maternity Leave may be made:
- 13.13.1.1 In advance in a lump sum.
  - 13.13.1.2 On a normal monthly basis.
  - 13.13.1.3 Payment for such period of leave shall be calculated on the weekly average of the total amount paid by the Department to the employee for the twelve months immediately prior to the date on which leave is commenced. For the purposes of this subclause, "total amount" shall include all payments made to the employee by the Department excluding payments made as compensation or reimbursement for expenses (eg. payments for meals, accommodation and for kilometres travelled).
- 13.13.2 Payment to eligible employees for the three weeks paid Adoption Leave may be made:
- 13.13.2.1 In advance in a lump sum.
  - 13.13.2.2 On a normal monthly basis.
  - 13.13.2.3 Payment for such period of leave shall be calculated on the weekly average of the total amount paid by the Department to the employee for the twelve months immediately prior to the date on which leave is commenced. For the purposes of this subclause "total amount" shall include all payments made to the employee by the Department excluding payments made as compensation or

reimbursement for expenses (eg. payments for meals, accommodation and for kilometres travelled).

### **13.14 Commissioner's Obligations**

13.14.1 Information to Employees - On becoming aware that an employee (or an employee's spouse) is pregnant, or that an employee is adopting a child, the Commissioner must inform the employee of:

13.14.1.1 The employee's entitlements to Parental Leave under this clause.

13.14.1.2 The employee's obligations to notify the Commissioner of any matter under this clause.

13.14.2 Records - The Commissioner must keep for at least six years, a record of Parental Leave granted under this clause to employees and all notices and documents given under this clause by employees or the Commissioner.

### **13.15 Termination of Employment because of Pregnancy etc**

13.15.1 The Commissioner must not terminate the employment of an employee because:

13.15.1.1 The employee is pregnant or has applied to adopt a child.

13.15.1.2 The employee has given birth to a child or has adopted a child.

13.15.1.3 The employee has applied for, or is absent on Parental Leave, but otherwise the rights of the Commissioner in relation to termination of employment are not affected by this clause.

13.15.2 For the purposes of establishing such a termination of employment, it is sufficient if it is established that the alleged reason for termination was a substantial and operative reason for termination.

13.15.3 This clause does not affect any other rights of a dismissed employee.

### **13.16 Replacement Employees**

13.16.1 A replacement employee is a person who is specifically employed as a result of an employee proceeding on Parental Leave (including as a replacement for an employee who has been temporarily promoted or transferred in order to replace the employee proceeding on parental leave).

13.16.2 Before a replacement employee is employed, the Commissioner must inform the person of the temporary nature of the employment and of the rights of the employee on Parental Leave to return to work.

13.16.3 A reference in this clause to an employee proceeding on leave includes a reference to a pregnant employee exercising a right to be transferred to a safe job.

### **13.17 Transfer to a Safe Job**

13.17.1 This subclause applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or new born child. The assessment of such a risk is to be made on the basis of a medical certificate supplied by the employee and of the

obligations of the Commissioner under the *Occupational Health and Safety Act 2000*.

13.17.2 The Commissioner is to temporarily adjust the employee's working conditions or hours of work to avoid exposure to risk as follows:

13.17.2.1 Where a female employee is confirmed pregnant she is to notify the Regional Commander or Officer-in-Charge as soon as possible who will, in turn, direct that she be withdrawn from operational firefighting duties.

13.17.2.2

13.17.2.2.1 The standard issue uniform is to be worn by members until the pregnancy becomes apparent prior to the birth and from the tenth week, if practicable, following the birth.

13.17.2.2.2 Employees will be provided with a maternity uniform for use when appropriate.

13.17.2.3 An employee on maternity leave who gives birth to a living child shall not resume operational firefighting duties until thirteen weeks have elapsed after the birth of the child, unless a special request for early return is made by the employee supported by a medical certificate from a qualified medical practitioner, subsequently endorsed by the Department's Occupational Health Physician.

13.17.2.4 Duties other than fire fighting may be undertaken after six weeks following the birth of the child, if endorsed by the Occupational Health Physician.

13.17.2.5

13.17.2.5.1 Upon withdrawal from operational firefighting duties alternate work of a suitable nature is to be provided.

13.17.2.5.2 Allocation of duties will be determined by the Department following consultation between the Department's Occupational Health Physician, the employee's Officer-in-Charge and the employee.

13.17.3 If such an adjustment is not feasible or cannot reasonably be required to be made, the Commissioner is to transfer the employee to other work where she will not be exposed to that risk.

13.17.4 If such a transfer is not feasible or cannot reasonably be required to be made, the Commissioner is to grant the employee Maternity Leave under this clause (or any available paid Sick Leave) for as long as is necessary to avoid exposure to that risk, as certified by a medical practitioner.

### **13.18 Special Maternity Leave and Sick Leave**

13.8.1 If the pregnancy of an employee not then on maternity leave terminates before the expected date of birth (other than by the birth of a living child) or she suffers illness related to her pregnancy:

- 13.18.1.1 The employee is entitled to such period of unpaid leave (to be known as special Maternity Leave) as a medical practitioner certifies to be necessary before her return to work.
- 13.18.1.2 The employee is entitled to such paid sick leave (either instead of or in addition to special Maternity Leave) as she is then entitled to and as a medical practitioner certifies to be necessary before her return to work.

### **13.19 Special Adoption Leave**

- 13.19.1 An employee who is seeking to adopt a child is entitled to up to two days unpaid leave if the employee requires that leave to attend compulsory interviews or examinations as part of the adoption procedure.

## **14. Personal/Carer's Leave**

### **14.1 Use of Sick Leave**

- 14.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subclause 14.1.3.2, who needs the employee's care and support shall be entitled to use, in accordance with this clause, any current or accrued Sick Leave entitlement, provided for at clause 15, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
- 14.1.2 The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- 14.1.3 The entitlement to use Sick Leave in accordance with this clause is subject to:
  - 14.1.3.1 The employee being responsible for the care of the person concerned.
  - 14.1.3.2 The person concerned being:
    - 14.1.3.2.1 A spouse of the employee.
    - 14.1.3.2.2 A de facto spouse who, in relation to a person, is a person of the opposite sex to the first mentioned person and who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis, although not legally married to that person.
    - 14.1.3.2.3 A child or an adult child (including an adopted child, a stepchild, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee.
    - 14.1.3.2.4 A same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis.

14.1.3.2.5 A relative of the employee who is a member of the same household where, for the purposes of this subclause:

14.1.3.2.5.1 "Relative" means a person related by blood, marriage or affinity.

14.1.3.2.5.2 "Affinity" means a relationship that one spouse, because of marriage, has to blood relatives of the other.

14.1.3.2.5.3 "Household" means a family group living in the same domestic dwelling.

14.1.4 An employee shall, wherever practicable, give the Department notice, prior to the absence, of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the Department by telephone of such absence at the first opportunity on the day of absence.

## **14.2 Unpaid Leave for Family Purpose**

14.2.1 An employee may elect, with the consent of the Department, to take unpaid leave for the purpose of providing care and support to a class of person, as set out in subclause 14.1.3.2, who is ill.

## **14.3 Annual Leave**

14.3.1 An employee may elect, with the consent of the Department, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding five days in any calendar year at a time or times agreed upon by the Department and the employee.

## **15. Sick Leave**

15.1 In every case of illness or incapacity sustained by an employee whilst off duty, the following conditions shall apply.

15.2 Such employee shall, as soon as practicable, inform the Officer-in-Charge of the station to which the employee is attached of such inability to attend, or to be available for duty and as far as possible, shall state the nature of the illness or incapacity and the estimated duration of the same.

15.3 Such employee shall forward to the Officer-in-Charge of the station to which the employee is attached, a medical certificate stating the nature of the illness or incapacity. Before being entitled to resume duty, the employee must furnish a further medical certificate to the effect that the employee has recovered from the illness or incapacity and is fit for duty, unless a person authorised by the Commissioner dispenses with this requirement.

15.4 If so required, such employee shall submit to an examination by, or arranged by, the Department's medical officer.

15.5 Every employee who is absent from duty for a period of more than twenty-eight days will have their case reviewed by the Department's medical officer, and must be certified by such medical officer as fit for duty prior to being permitted to resume duty.

- 15.6 The granting of Sick Leave, the duration thereof and the pay, if any, for the same shall be on the following basis:
- 15.6.1 One week paid sick leave for each year of service, cumulative, less any paid Sick Leave taken, to a maximum of twenty six weeks.
  - 15.6.2 Sick Leave beyond that provided for in subclause 15.6.1 shall be Sick Leave without pay.
  - 15.6.3 Payment for Sick Leave shall be calculated on the weekly average of the total amount paid by the Department to the employee for the twelve months immediately prior to the date on which leave is commenced excluding any periods of Special Leave Without Pay, unpaid leave and/or suspension. For the purposes of this subclause, "total amount" shall include all payments made to the employee by the Department excluding payments made as compensation or reimbursement for expenses (eg. payments for meals, accommodation and for kilometres travelled).
- 15.7 Where payment has been made for sick leave, under this clause, to an employee whose sick leave entitlement has already been exhausted, or whose right to sick leave is not established, the Department may deduct the amount overpaid from any future payments made to the employee concerned in accordance with the provisions of subclause 6.10.

## **16. Special Leave for Union Activities**

### **16.1 Attendance at Union Conferences/Meetings**

- 16.1.1 Employees who are members of the Union and accredited by the Union as a delegate are entitled to special leave with pay to attend the following:
  - 16.1.1.1 Annual or bi-annual conferences of the Union.
  - 16.1.1.2 Meetings of the Union's Executive/Committee of Management.
  - 16.1.1.3 Annual conference of the Labor Council of NSW.
  - 16.1.1.4 Bi-annual conference of the Australian Council of Trade Unions.
- 16.1.2 While there is no limit on special leave for Union activities, such leave is to be kept to a minimum and is subject to the employee:
  - 16.1.2.1 Establishing accreditation as a delegate with the Union.
  - 16.1.2.2 Providing sufficient notice of absence to the Department.
  - 16.1.2.3 Lodging a formal application for special leave.
- 16.1.3 Such leave is also subject to the Union:
  - 16.1.3.1 Providing documentary evidence to the Department about an accredited delegate in sufficient time to enable the Department to make arrangements for performance of duties.
  - 16.1.3.2 Meeting all travelling, accommodation and any other costs incurred for the accredited delegate.

- 16.1.3.3 Providing the Department with confirmation of attendance of the accredited delegate.
- 16.1.4 Providing the provisions of this clause are satisfied by both the employee and the Union, the Department shall:
  - 16.1.4.1 Release the accredited delegate for the duration of the conference or meeting.
  - 16.1.4.2 Grant special leave (with pay).
  - 16.1.4.3 Ensure that the duties of the absent delegate are performed in his/her absence, if appropriate.
- 16.1.5 Period of Notice -
  - 16.1.5.1 Generally, dates of conferences or meetings are known well in advance and it is expected that the Department would be notified as soon as accreditation has been given to a delegate, or at least two weeks before the date of attendance.
  - 16.1.5.2 Where extraordinary meetings are called at short notice, a shorter period of notice would be acceptable, provided such notice is given to the Department as soon as advice of the meeting is received by the accredited delegate.
- 16.1.6 Travel Time -
  - 16.1.6.1 Where a delegate has to travel to Sydney, inter or intra State, to attend a conference or meeting, special leave will also apply to reasonable travelling time to and from the venue of the conference or meeting.
- 16.1.7 Payment -
  - 16.1.7.1 An employee entitled to Special Leave in terms of this clause shall, for the period of such Special Leave, be deemed to have attended any incident, drill or other authorised duties which occurred at the employee's Brigade during such leave, and be paid accordingly.
- 16.1.8 Special Leave in terms of this clause shall count as service for all purposes.
- 16.1.9 Availability of Special Leave -
  - 16.1.9.1 Special Leave shall not be available to employees whilst they are on any period of other leave.

**16.2 Attendance at Courses/Seminars Conducted or Supported by Trade Union Education Foundation (TUEF)**

- 16.2.1 Except where inconsistent with the provisions of subclause 16.2, the provisions of subclause 16.1 of this clause shall also apply to attendance at courses or seminars conducted or supported by TUEF.
- 16.2.2 Up to a maximum of twelve days in any period of two years may be granted to employees who are members of the Union.

- 16.2.3 The grant of leave to attend courses or seminars conducted or supported by TUEF, is subject to the following conditions:
- 16.2.3.1 Departmental operating requirements permit the grant of leave and the absence does not result in working of overtime by other employees.
  - 16.2.3.2 Expenses associated with attendance at such courses or seminars, eg. fares, accommodation, meal costs, etc., will be required to be met by the employee concerned but, subject to the maximum prescribed in subclause 16.2.2., special leave may include travelling time necessarily required to attend courses or seminars.
  - 16.2.3.3 Applications for leave must be accompanied by a statement from the Union that it has nominated the employee concerned for such a course or seminar and supports the application.

### **17. Court Attendance Entitlements**

- 17.1 The provisions of this clause shall apply to employees attending Court (which term shall include any related conferences) as a:
- 17.1.1 Result of the duties performed by the employee in the employee's position with the Department, including attendance at an incident.
  - 17.1.2 Witness for the Crown but not as a result of the duties performed by the employee in the employee's position with the Department.
  - 17.1.3 Witness in a private capacity.
- 17.2 Attendance at Court as a result of the duties performed by an employee in the employee's position with the Department, including attendance at an incident.
- 17.2.1 Such attendance shall be regarded as attendance in an official capacity and uniform must be worn.
  - 17.2.2 Other than monies paid as reimbursement for loss of income as an employee of the Department, employees may retain all monies paid in connection with their attendance as a witness.
  - 17.2.3 In addition to any monies to which an employee may be entitled pursuant to subclause 17.2.2, employees shall be paid at the rate applicable to the employee's classification, from the time the employee is required to attend Court to the time on that day that the employee is no longer required by the Court.
  - 17.2.4 Travelling time and travel expenses in excess of any compensation therefor paid by the Court or other party shall be compensated in accordance with clause 19, Travelling Compensation.
  - 17.2.5 Where the employee is recalled to duty to attend Court while on Annual or Long Service Leave, such employee shall be recredited with a full days leave, for each day or part thereof.
  - 17.2.6 Where an employee is subpoenaed to attend Court while on Sick Leave it is the responsibility of the employee to ensure that the circumstances are communicated to the Court. If the employee is still required to and does attend Court, the sick leave debited for that period shall be recredited and the entitlements provided for in subclauses 17.2.2, 17.2.3 and 17.2.4 shall apply.

### 17.3 Where an Employee Attends Court

17.3.1 As a Witness for the Crown but not as a result of the duties performed by the employee in the employee's position with the Department; or as a witness in a Private Capacity, (ie, not subpoenaed by the Crown):

17.3.1.1 The employee shall only be entitled to Special Leave Without Pay from the Department to attend Court.

17.3.1.2 Any claim for reimbursement of expenses, compensation for travelling time, lost income etc. is to be made by the employee to the Court and/or the party issuing the subpoena. The employee may retain all monies paid as a consequence of such claims.

## **18. Training Course Attendance Entitlements**

18.1 The provisions of this clause shall apply to attendance at training programs (other than regular drills) delivered by, on behalf of, or approved by the Department.

### **18.2 Accommodation**

18.2.1 The Commissioner (or delegate) shall approve appropriate accommodation for an employee, if it can be demonstrated that an unreasonable amount of travelling time and/or distance is involved when travelling to and from the employee's residence to the training venue.

18.2.2 Where Departmental accommodation is not provided to an employee with an entitlement to accommodation, the relevant accommodation provisions prescribed by clause 19, Travelling Compensation, shall be paid.

18.2.3 Where it is not possible for an employee to travel to the training venue on the first day of the course or where the travelling time would be unreasonable to travel on the first day of the course, the employee shall be entitled to appropriate accommodation on the evening prior to the start of the course. If it is not possible for an employee to travel from the training venue to his or her residence at the conclusion of the course or if the travelling time would be unreasonable, the employee shall be entitled to appropriate accommodation on the evening of the last day of the course. Approval must be obtained from the Commissioner (or delegate) prior to bookings being made.

18.2.4 Notwithstanding the provisions of this subclause, any employee who considers that these criteria would cause undue hardship etc. may make application for special consideration. All such applications will be considered on their individual merits according to the program content and the starting and completion times, on a daily basis.

### **18.3 Meals**

18.3.1 All employees attending training programs which extend for a whole day shall be provided with morning/afternoon tea and lunch.

18.3.2 Where employees have been granted approval for overnight accommodation and when such accommodation is provided by the Department, expenses reasonably and properly incurred shall be reimbursed in accordance with clause 19, Travelling Compensation.

- 18.3.3 Employees who are not required to accommodate themselves overnight shall, where appropriate, be paid the relevant meal allowances prescribed by clause 19, Travelling Compensation.
- 18.3.4 Meal allowances are not payable during times at which an accommodation allowance (as prescribed in subclause 18.2.2) has been paid. A component of the accommodation allowance compensates for the costs associated with breakfast, lunch and evening meals.

#### **18.4 Incidentals**

- 18.4.1 Employees who are provided with Departmental accommodation shall be entitled to claim the appropriate incidental allowance as prescribed by clause 19, Travelling Compensation.
- 18.4.2 The incidental allowance cannot be claimed for any day during which an accommodation allowance referred to in subclause 18.2.2, is paid. The incidental allowance forms a component of the accommodation allowance and amongst other things, recognises the cost associated with personal telephone calls, etc.

#### **18.5 Travelling Time**

- 18.5.1 Compensation shall be in accordance with Clause 19, Travelling Compensation.

### **19. Travelling Compensation**

**19.1 Travelling Time** - When an employee is required to travel for purposes other than attending regular drills or incidents, the employee may apply for payment, at the rate applicable to the employees' classification, for time spent travelling subject to the following:

- 19.1.1 Where the employee has travelled overnight but has been provided with sleeping facilities, the travelling time shall not include travel between 2300 hours on one day and 0730 hours on the next day.
- 19.1.2 Travelling time does not include time spent taking a meal when the employee stops a journey to take the meal.
- 19.1.3 Travelling time shall be calculated by reference to the use of the most practical and economic means of transport.
- 19.1.4 Payment will not be made or allowed for more than eight hours in any period of twenty-four hours.
- 19.1.5 Where an employee is in receipt of the kilometre allowance prescribed at Entitlement Code "K" of Table 1 of Part B, such employee shall not be entitled to claim compensation for travelling time.

**19.2 Meal Allowances** - When an employee is required to perform official duty at a temporary work location, other than attendance at incidents or regular drills, and is not required to reside away from home (a one day journey), the employee shall be eligible to be paid the following meal allowances, subject to the following conditions:

- 19.2.1 For breakfast when required to commence travel at/or before 0600 hours, the amount set at Item 1 of Table 2 of Part B.

- 19.2.2 For lunch when, by reason of the journey, an employee is unable to take lunch at the place or in the manner in which the employee ordinarily takes lunch and is put to additional expense, the amount set at Item 2 of Table 2 of Part B, or an amount equivalent to the additional expense, whichever is the lesser.
- 19.2.3 For an evening meal when required to work or travel until or beyond 1830 hours, an amount set at Item 3 of Table 2 of Part B.
- 19.2.4 Meal Allowances shall not be paid where the employee is provided with an adequate meal.

**19.3 Accommodation Allowances** - When an employee is required to perform official duty at a temporary work location, other than attendance at incidents or regular drills, which requires the employee to reside away from home and the employee is not provided with accommodation by the Government, the employee shall be eligible to be paid the following accommodation (sustenance) allowances subject to the conditions set out below:

- 19.3.1 For the first thirty five calendar days, the appropriate amounts set at Item 4 of Table 2 of Part B.
- 19.3.2 The actual necessary expenses for meals and accommodation (actuals), together with incidental expenses as appropriate, set at Item 5 of Table 2 of Part B. The necessary expenses do not include morning and afternoon tea.
- 19.3.3 After the first thirty five calendar days and for up to six months an employee shall be paid an allowance at the rate set at Item 6 of Table 2 of Part B provided the allowance paid to an employee, temporarily located in Broken Hill shall be increased by 20%. The allowance is not payable in respect of:
  - 19.3.3.1 Any period during which the employee returns home on weekends or public holidays, commencing with the time of arrival at the residence and ending at the time of departure from the residence.
  - 19.3.3.2 Any other period during which the employee is absent from the temporary work location (including leave) otherwise than on official duty, unless approved by the Commissioner.
- 19.3.4 The capital city rate shall apply to Sydney in respect of the Sydney telephone district only as defined by Telstra Corporation Ltd.
- 19.3.5
  - 19.3.5.1 Where an employee proceeds directly to a temporary work location in a Capital city and returns direct, the Capital city rate applies to the whole absence.
  - 19.3.5.2 Where an employee breaks the journey, other than for a meal, in a centre that is not a Capital city, the Capital city rate applies only in respect of the time spent in the Capital city, the elsewhere rate applies to the remainder of the absence.

**19.4 Incidental Expenses Allowances - Government Provided Accommodation** - When an employee is required to perform official duty at a temporary work location which requires that the employee reside away from home and is provided with accommodation by the Government, the employee shall be eligible to be reimbursed expenses properly and reasonably incurred during the time actually spent away from the employee's residence in order to perform that duty and in addition be paid an allowance at the rate set at Item 5 of

Table 2, of Part B as appropriate. Such expenses are limited to costs in relation to food, laundry and accommodation that exceed what would normally have been incurred at home. Any meal taken at a Government establishment is to be paid for and appropriate reimbursement sought.

## **19.5 Additional Provisions**

- 19.5.1 Unless specifically provided for in Clause 18, Training Course Attendance Entitlements or Clause 17, Court Attendance Entitlements, the provisions of this clause shall not apply in the circumstances provided for by those clauses.
- 19.5.2 When an employee is required to travel to a temporary work location or to attend a training course or conference on what would normally be regarded as a one day journey and the total time of absence will exceed 13 hours, the employee may be directed or may request that the employee reside temporarily at a place other than the employee's residence. In such cases, employees shall be entitled to the accommodation allowances or reimbursement of expenses, as appropriate.
- 19.5.3 The claim for an accommodation allowance or reimbursement of expenses shall be for the whole of the period of absence and cannot be dissected into part of the time of the absence by way of allowance and part of the absence being compensated by reimbursement.
- 19.5.4 When an employee in receipt of an accommodation allowance is granted special leave to return home from a temporary work location, the employee shall be reimbursed for the cost of the return rail fare or, if a first class rail service is reasonably available, the cost of a first class return rail fare. No taxi fares or other incidental expenses are payable.
- 19.5.5 Employees shall be entitled, subject to Departmental approval, to use either their private vehicle or public transport on the following basis:
  - 19.5.5.1 Reimbursement is not to be paid for a journey if an official motor vehicle is used for the journey.
  - 19.5.5.2 Where employees are granted approval to use their private vehicles, such employees shall receive the kilometre rate, set at Entitlement Code "K" of Table 1 of Part B, for the actual distance necessarily and reasonably travelled. Employees in receipt of the rate set at Entitlement Code "K" of Table 1 of Part B, shall not be entitled to the provisions of subclause 19.1, Travelling Time.
  - 19.5.5.3 Employees who are required to utilise public transport shall be reimbursed the necessary costs incurred.
  - 19.5.5.4 The Commissioner is to consider the convenience of the employee when an employee is required to travel to a temporary work location.
  - 19.5.5.5 Unless special circumstances exist, the employee's work, the mode of transport used and the employee's travel itineraries are to be organised and approved in advance so that compensation for travel time and payment of allowances is reasonably minimised.
- 19.5.6 Where a meal allowance or an accommodation allowance is insufficient to adequately reimburse the employee for expenses properly and reasonably incurred, a further amount may be paid so as to reimburse the employee for the additional expenses incurred, subject to the following:

19.5.6.1 The Commissioner may require the production of receipts or other proof that expenditure was incurred.

19.5.6.2 If any expense in respect of which an allowance is payable was not properly and reasonably incurred by the employee in the performance of official duties, payment of the allowance may be refused or the amount of the allowance may be reduced.

19.5.6.3 If any purported expense was not incurred by the employee, payment of the allowance may be refused or the amount of the allowance may be reduced.

**19.6 Claims** - Claims should be submitted promptly, ie., within one month from the completion of the work or within such time as the Commissioner determines.

19.6.1 The Commissioner may approve applications for advance payments of travelling and sustenance allowances. Such applications should detail the appropriate expenditure anticipated and be in accordance with In Orders 1982/34.

19.6.2 In assessing claims for travelling time and payment of allowances, reference should be made to the time that might reasonably have been taken by the particular mode of transport used. Provided that where an employee can demonstrate that the use of the means of transport proposed by the Department is unreasonable in the circumstances, the employee may apply to the Commissioner for a review of the Department's decision. Where an employee does not wish to use the means of transport proposed by the Department, eg. air travel as against train or car travel, travelling time and allowances should be assessed on the basis that the most practical and economical means of transport is used.

19.6.3 Where an allowance is payable at a daily rate and a claim is made for a portion of the day, the amount to be paid is to be calculated to the nearest half hour.

19.7 The amounts set at Items 1 to 6 in Table 2 of Part B, shall be adjusted in line with the allowances prescribed in the Crown Employees (Public Service Conditions of Employment 2002) Award, in the same amounts and from the same dates.

## **20. Transfers**

20.1 Subject to satisfactory attendance and service and the employee meeting Departmental residential guidelines, an employee may apply for a transfer from one Volunteer Brigade to another Volunteer Brigade.

20.2 In the event that the station to which the transfer is sought does not have a vacancy, the Department may appoint such employee as a supernumerary. Where an employee is not appointed as a supernumerary, such employee shall be placed on an eligibility list for appointment at the station when a vacancy arises.

20.3 Where a transfer does not result in a break in service, the employee's service shall be regarded as continuous.

20.4 Any employee transferred from one Volunteer Brigade to another Volunteer Brigade shall not be entitled to compensation or reimbursement of expenses in relation to that transfer.

## 21. Procedures Regarding Reports and Charges

- 21.1 When an employee is summoned to appear before the employee's Senior Officer or before the Department on a charge, appeal or formal inquiry, the employee shall be given particulars in writing of the charge or allegation, if any, against the employee, at least 48 hours before the hearing of the charge or appeal or the opening of the said inquiry. The employee shall be allowed access personally or by a representative duly authorised in writing by the employee, to all or any of the official papers, correspondence or reports of the Department relating to the charge, appeal, or subject of the said inquiry.
- 21.2 The employee also shall be allowed to give and to call evidence on the employee's own behalf and to hear all evidence given.
- 21.3 If an employee so requests, the employee may be represented by an officer of the Union before the employee's Senior Officer or the Department on all such occasions.
- 21.4
- 21.4.1 No report about an employee shall be placed on the records or papers relating to that employee unless the employee concerned has been shown the said report.
- 21.4.2 If the employee disagrees with the report, the employee shall be entitled to make such a notation on the report.
- 21.4.3 Evidence that the employee has been shown the report will be by either the employee's signature thereon, or in accordance with subclause 21.4.4.
- 21.4.4 Where an employee refuses to sign the report, such refusal shall immediately be noted upon the report by the Senior Officer handling the report. In such cases, the Senior Officer will advise the employee that the refusal to sign will be noted on the report and that the report, together with such notation, will be placed on the records or papers relating to that employee.
- 21.4.5 Further to subclause 21.4.4, in such circumstances, the Department will notify the Union in writing, within seven days of such refusal and the Union shall be given an opportunity of replying to the report.
- 21.4.6 If the employee so desires, any written response from either the employee or the Union shall also be placed amongst the records or papers relating to the employee or noted thereon.
- 21.5 Where the Department has for its own purposes, arranged for a transcript to be taken of proceedings on a charge, appeal or formal inquiry, a copy of such transcript shall be supplied free of cost to the employee concerned if, during the hearing or at the termination of the proceedings, a request therefor, in writing, is made by the employee.
- 21.6 After the Senior Officer has announced the recommendation or when the Department has made its decision as the result of a charge or an appeal, the employee concerned shall be informed thereof, in writing, within seven days after such announcement or decision has been made or has been given, as the case may be.
- 21.7 For the purposes of this clause "Senior Officer" means the employees' Senior Officer or an Officer of a higher rank.

## **22. Acknowledgment of Applications and Reports**

- 22.1 When an employee makes an application or a report in writing to the proper officer, the employee shall be sent an acknowledgment of its receipt, noting the matter contained therein.
- 22.2 The result of an application shall be communicated to the employee no later than fourteen days after a decision has been reached. In cases where no decision has been reached within one month, the reason for the delay shall be communicated in writing to the employee.
- 22.3 The provisions of this clause shall not apply in cases where other procedures are specifically stipulated (eg. in Standing Orders or In Orders).

## **23. Training and Staff Development**

- 23.1 The parties confirm their commitment to training and staff development for employees of the Department.
- 23.2 Employees covered by this Award shall be required to complete appropriate training to improve the productivity and efficiency of the Department's operations.
- 23.3 Employees shall be required to complete training in accordance with competency requirements as determined by the Commissioner.
- 23.4 An employee may be directed to carry out any duties appropriate to the employee's classification that are within the employee's level of skill, competence and training, provided that such direction does not promote deskilling.

### Training Review Committee (TRC)

- 23.5 The TRC shall develop and implement an effective and equitable system of training in the NSW Fire Brigades using the principles of Competency Based Training.
- 23.6 The structure of the TRC will consist of 3 representatives of the Department and 3 representatives of the Union.
- 23.7 The Chairperson of the Committee will alternate every 12 months between a nominee of the Department and the Union.
- 23.8 The role of the TRC will include (but not be limited to):
  - 23.8.1 the further development of training throughout the NSW Fire Brigades;
  - 23.8.2 overseeing the implementation of an agreed Competency Based Training regime throughout the NSW Fire Brigades;
  - 23.8.3 acting as a reference point for all disputes relating to training in the NSW Fire Brigades; and
  - 23.8.4 considering Recognised Prior Learning (RPL) policy generally and in particular, it will consider individual applications for RPL.
- 23.9 Procedure
  - 23.9.1 The TRC will meet at least once every four weeks.

23.9.2 Members of the TRC shall be released from day to day operations, except in the event of an incident or other emergency circumstances, for the purposes of fulfilling the above roles.

23.9.3 The TRC will be adequately resourced by the Department so that it can effectively fulfil the above roles.

#### **24. Protective Clothing and Uniforms**

24.1 The Department shall supply to all employees two sets of appropriate protective clothing for operational duties which shall meet relevant National and/or International Standards, or as otherwise agreed to with the Union.

24.2 Employees supplied with the above clothing shall wear it in accordance with Departmental instructions.

24.3 The provision of wet weather gear shall be in accordance with existing practice.

24.4 Where any uniform or wearing apparel is supplied by the Department and is required to be worn by its employees, and such uniform or wearing apparel becomes soiled or damaged in the execution of duty as to require dry cleaning or repairs, such dry cleaning or repairs shall be done at the expense of the Department.

24.5 When an employee retires, resigns or is terminated, the protective clothing issued to that employee shall be returned to the station to which the employee was attached. As much of that returned protective clothing shall be retained at the station as is necessary to maintain a reasonable supply of spare protective clothing.

#### **25. Disputes Avoidance Procedures**

25.1 Subject to the provisions of the *Industrial Relations Act 1996*, and to enable claims, issues and disputes to be resolved while work proceeds normally, the following procedures are to apply:

25.1.1 Employee(s) and/or Union representatives will place the matter before the immediate supervisor. The immediate supervisor will take all reasonable steps to reply to the employee(s) and/or Union representatives as soon as possible and will at least provide a progress report before the close of ordinary business on the next working day.

25.1.2 Failing agreement, employee(s) and/or Union representatives will place the claim, issue or dispute before the next highest Officer-in-Charge of the relevant zone or region. That officer will take all reasonable steps to reply to the employee(s) and/or Union representatives as soon as possible and will at least provide a progress report before the close of ordinary business on the next working day.

25.1.3 Failing agreement, employee(s) and/or Union representatives will place the claim, issue or dispute before the Director Human Resources. The Director Human Resources will take all reasonable steps to reply to the employee(s) and/or Union representatives as soon as possible and will at least provide a progress report before the close of ordinary business on the next working day.

25.1.4 Failing agreement, employee(s) and/or Union representatives will place the claim, issue or dispute before the Commissioner. The claim, issue or dispute and all relevant circumstances relating to it will be fully reviewed by the Commissioner and the Union and all reasonable steps shall be taken in an attempt to resolve the matter.

25.1.5 No action is to be taken by the Union which would affect the Department's operations while a dispute is under investigation.

25.1.6 Failing agreement, the claim, issue or dispute shall be referred to the appropriate industrial tribunal.

## **26. Attendance Requirements at Incidents and Drills**

26.1 The following attendance guidelines shall apply to employees covered by this Award:

26.1.1 Attendance at Incidents -

26.1.1.1 Employees who, by virtue of their primary form of employment, are dayworkers are required to attend a minimum of 50% of all night and weekend calls received by the employee's brigade in any six month period.

26.1.1.2 Employees who, by virtue of their primary form of employment, are shiftworkers are required to attend a minimum of 33% of all calls received by the employee's brigade in any six month period.

26.1.2 Attendance at Drills - Employees are required to attend a minimum of 75% of all regular drills conducted at their brigade in any six month period.

26.2 Any period of approved leave or authorised absence shall be excluded when determining an employee's levels of attendance.

26.3 In cases where an employee's attendance falls below the requirements prescribed by subclause 26.1, the following procedures are to apply:

26.3.1 The Officer in Charge of the station to which the employee is attached, shall discuss the matter with the employee concerned. The employee may be informed that his/her attendance will be monitored over the next 3 months.

26.3.2 If the employee's attendance does not meet the required levels for the 3 month period outlined in 26.3.1, the employee's Regional Commander shall notify the employee in writing of such deficiency. The employee shall be given a further 3 month period to improve his/her attendance levels, before any further action may be taken.

26.4 Employees who have been notified in terms of 26.3.1 and/or 26.3.2 may make application to the Commissioner for special consideration.

26.5 The attendance requirements referred to in subclause 26.1 may be altered by agreement between the Department and the Union.

26.6 "Day worker" means for the purposes of this clause, a worker who consistently works his/her ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6:00 am and before 10:00 am.

26.7 "Shift worker" means for the purposes of this clause, a worker who is not a day worker as defined in subclause 26.6.

## **27. Attendance at Major Emergencies**

27.1 The provisions of this clause shall apply to those employees who attend a Major Emergency which has, following agreement between the Union and the Department, been deemed to attract such entitlements.

### **27.2 Travel Entitlements**

27.2.1 Employees who are required to collect their firefighting uniform from the station shall be paid in accordance with subclause 9.1.1.1.

27.2.2 Employees who are required to use their private vehicle to attend the incident or a "pick up point" that is not at their station, shall be paid at the rate prescribed at Entitlement Code "K" of Table 1 of Part B, for the return distance from the station to the incident or pick up point.

27.2.3 Employees who are provided with transport for any part of the forward and return journeys between their residence and the incident shall be entitled to be paid travelling time at the appropriate rate of pay for the employee's classification for the time spent travelling, provided that:

27.2.3.1 Travelling Time shall not be paid for any part of a journey where the employee received payment under subclauses 27.2.1 or 27.2.2 of this Award; and

27.2.3.2 Travelling Time for the forward journey shall be calculated as being the total time between departure from the station or pick up point to arrival at the incident; and

27.2.3.3 Travelling Time for the return journey shall be calculated as being the total time between departure from the incident to arrival at the pick up point or station.

### **27.3 Accommodation Entitlements**

27.3.1 Employees who reside further than 50 kilometres from the scene of the major emergency shall be entitled to be provided with appropriate accommodation where their attendance at the emergency extends beyond a single day or in such cases where it would be unreasonable to travel at the conclusion of duty.

27.3.2 Notwithstanding the provisions of subclause 27.3.1, the Commissioner may grant approval to provide appropriate accommodation to employees who reside within 50 kilometres of the scene of a major emergency.

27.3.3 Employees who are provided with accommodation shall be entitled to claim the incidental allowance prescribed at Item 5 of Table 2 of Part B, for each day of attendance.

27.3.4 Employees who have an entitlement to accommodation but are not provided with appropriate accommodation shall be entitled to claim an accommodation allowance in accordance with subclause 19.3.

### **27.4 Meals**

27.4.1 Employees shall be provided with substantial meals for breakfast, lunch and dinner throughout the period of attendance at a major emergency.

27.4.2 Where meals are not provided to employees in accordance with subclause 27.4.1, an allowance set at Entitlement Code "M" of Table 1 of Part B shall be paid.

27.4.3 Where employees are required to work between the meals provided for in subclause 27.4.1, such employees shall be entitled to the refreshments and meals prescribed by subclause 8.1.

## **27.5 Payment for time spent in Attendance**

27.5.1 Where an employee's period of attendance at a major emergency is less than 48 hours, such employee shall be paid at the appropriate rate of pay for the employee's classification for the entire period of attendance.

27.5.2 Where an employee's period of attendance at a major emergency is greater than 8 hours, such employee shall be paid at the appropriate rate of pay for the employee's classification for the following periods:

27.5.2.1 on the day of departure from the employees' residence, the period from the time of departure to 2400 Hrs; and

27.5.2.2 on the day of arrival at the employees' residence following attendance at the major emergency, the period from 0000 Hrs to the time of arrival; and

27.5.2.3 for the period between the day of departure to and the day of return from attendance at a major emergency, all time less any periods of down time, provided that employees will receive payment of a minimum of 16 hours per day.

27.5.3 For the purposes of this subclause the "period of attendance at a major emergency" shall mean the entire period from the time of departure from the employee's residence until the time of return to the employee's residence following attendance at the emergency.

27.5.4 For the purposes of this subclause "periods of down time" shall mean periods of not less than 8 consecutive hours where employees are neither performing operational duties nor on stand by to perform such duties.

## **28. Drug and Alcohol Protocol**

28.1 The joint Protocol on Drug and Alcohol Safety and Rehabilitation in the Workplace, signed by the Department and the Union on 18 March 1998, shall apply to all employees covered by this Award.

28.2 Any changes to the Protocol shall only be by agreement between the Department and the Union.

## **29. Salary Sacrifice to Superannuation**

29.1 For the purposes of this Clause, "salary" means the retainer prescribed for the employee's classification by Clause 6, Rates of Pay and Allowances.

29.2 Notwithstanding the salaries prescribed in Part B, Rates of Pay and Allowances, an employee may elect, subject to the agreement of the employees Department or agency, to sacrifice a portion of the wage/salary payable under Clause 6 to this Award, to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. The amount

sacrificed together with any salary packaging arrangements under Clause 29A of this Award must not exceed fifty (50) percent of the wage/salary payable under Clause 6 or fifty (50) percent of the currently applicable superannuable salary, whichever is the lesser. In this clause, "superannuable salary" means the employee's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.

29.3 Where the employee has elected to sacrifice a portion of that payable salary to additional employer superannuation contributions:

29.3.1 subject to Australian Taxation law, the sacrificed portion of salary will reduce the salary subject to appropriate PAYE (i.e., "Pay As You Earn") taxation deductions by the amount of that sacrificed portion; and

29.3.2 any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under clause 6, in the absence of any salary sacrifice to superannuation made under this Award.

29.4 The employee may elect to have the portion of payable salary which is sacrificed to additional employer superannuation contributions:

29.4.1 paid into the superannuation scheme established under the *First State Superannuation Act 1992* as optional employer contributions; or

29.4.2 subject to the Department's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.

29.5 Where an employee elects to salary sacrifice in terms of subclause 29.4 above, the Department will pay the sacrificed amount into the relevant superannuation fund.

29.6 Where the employee is a member of a superannuation scheme established under:

- (a) the *Police Regulation (Superannuation) Act 1906*;
- (b) the *Superannuation Act 1916*;
- (c) the *State Authorities Superannuation Act 1987*;
- (d) the *State Authorities Non-contributory Superannuation Act 1987*; or
- (e) the *First State Superannuation Act 1992*

the employee's Department must ensure that the amount of any additional employer superannuation contributions specified in subclause 29.2 above is included in the employee's superannuable salary which is notified to the NSW Public Sector Superannuation Trustee Corporations.

29.7 Where, prior to electing to sacrifice a portion of his/her salary to superannuation, an employee had entered into an agreement with the Department to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause 29.6 above, the Department will continue to base contributions to that fund on the salary payable under clause 6 to the same extent as applied before the employee sacrificed portion of that salary to superannuation. This Clause applies even though the superannuation contributions made by the Department may be in excess of superannuation guarantee requirements after the salary sacrifice is implemented.

### **30. Wage/Salary Packaging Arrangements**

- 30.1 By mutual agreement with the Public Employment Office (PEO), an employee may, from time to time, elect to receive:
- 30.1.1 a benefit or benefits selected from those approved from time to time by the PEO; and
  - 30.1.2 a salary equal to the difference between the wage/salary prescribed for the employee by clause 6 of this award, and the amount specified by the PEO from time to time for the benefit provided to or in respect of the employee in accordance with such agreement.
- 30.2 The agreement shall be recorded in writing and shall be known as a Wage/Salary Packaging Agreement.
- 30.2.1 A Wage/Salary Packaging Agreement shall be for a period of up to 24 months, unless a different period is mutually agreed between the employee and the PEO at the time of signing the Wage/Salary Packaging Agreement.
  - 30.2.2 The PEO may vary the range and type of benefits available from time to time following discussion with Labor Council and the Union. Such variations shall apply to any existing or future Wage/Salary Packaging Agreement from date of such variation.
  - 30.2.3 The PEO will determine from time to time the value of the benefits provided following discussion with Labor Council and the Union. Such variations shall apply to any existing or future Wage/Salary Packaging Agreement from the date of such variation. In this circumstance, the employee may elect to terminate the Wage/Salary Packaging Agreement immediately.

### **31. Bereavement Leave**

- 31.1 An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay, on each occasion of the death of a person as prescribed in subclause 30.3 of this clause.
- 31.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- 31.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph 14.1.3.2 of clause 14, Personal/Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- 31.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- 31.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 14.2 and 14.3 of clause 14. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the Department.

### **32. Anti-Discrimination**

- 32.1 It is the intention of the parties bound by this Award to seek to achieve the object in 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.
- 32.2 It follows that in fulfilling their obligations under the Disputes Avoidance Procedures prescribed by Clause 25, 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 fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 32.3 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.
- 32.4 Nothing in this Clause is taken to affect:
- 32.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;
  - 32.4.2 offering or providing junior rates of pay to persons under 21 years of age;
  - 32.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - 32.4.4 a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 32.5 This Clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this Clause.

### **33. Area, Incidence and Duration**

- 33.1 This Award rescinds and replaces the Crown Employees (NSW Fire Brigades Retained Firefighting Staff) Award 2001 (335 I.G. Part 3), as varied.
- 33.2 This Award shall take effect on and from 1 April 2004 and shall remain in force until 31 March 2005.

**PART B**

**MONETARY RATES**

**Table 1 - Payment Entitlement Codes**

CLAUSE	DESCRIPTION	CODE	ON & FROM 1 APRIL 2004
6.3	Monthly Retainer Captain A	A	\$182.83
6.3	Monthly Retainer Captain B Deputy Captain A	B	\$164.94
6.3	Monthly Retainer Deputy Captain B	C	\$123.86
6.3	Monthly Retainer Firefighter A	D	\$94.02
6.3	Monthly Retainer Firefighter B	E	\$70.51
6.3	Monthly Retainer Firefighter C	F	\$47.11
6.3	1st Hour Captain	G	\$25.01
6.3	1st Hour Deputy Capt. Firefighter Levels A,B,C	H	\$21.66
6.3	Each Subsequent half hour or part Captain	I	\$12.51
6.3	Each Subsequent half hour or part Deputy Capt. Firefighter Levels A,B,C	J	\$10.84
9.1.1, 9.2.1, 9.3.1 & 9.4.1	Kilometre Allowance	K	0.83
6.8	Stand By Rate per hour	L	\$48.18
8.2	Meal Allowance	M	\$19.75
8.2	Refreshment Allowance	N	\$9.90

**Table 2 - Travelling Compensation Allowances**

ITEM NO	CLAUSE	DESCRIPTION	UNIT	1/4//04 RATE	
				##	^^
1	19.2.1	Breakfast	\$ per meal	17.70	15.75
2	19.2.2	Lunch	\$ per meal	19.75	18.05
3	19.2.3	Dinner	\$ per meal	34.05	31.15
4	19.3.1	Accommodation first 35 days (includes all meals) - Capital Cities Sydney Adelaide Brisbane Canberra Darwin Hobart Melbourne Perth - High Cost Country Centres Gold Coast (Qld) Newcastle Wollongong - Tier 2 Country Centres Bathurst Gosford Maitland Orange Wagga Wagga - Other Country Centres	\$ per day		
				238.35	
				207.35	
				201.35	
				185.35	
				202.35	
				189.35	
				235.35	
				202.35	
				187.35	
				172.35	
				170.35	
				157.80	
				157.80	
				157.80	
				157.80	
				157.80	
				145.80	
5	19.3.2 & 27.3.3	Actual Necessary Expenses	\$ per day	13.85	
6	19.3.3	Accommodation – after first 35 days up to 6 months	\$ per day	50% of the appropriate location rate	
7	19.4	Incidental Expenses	\$ per day	13.85	

**Legend:**

## = Capital Cities & High Cost Country Centres – includes all Capital Cities and Gold Coast (Qld), Newcastle, Wagga Wagga and Wollongong.

^^ = Tier 2 Country Centres & Other Country Centres including Bathurst, Gosford, Orange and all other country centres.

**Table 3 - Authorised Duties**

Attendance at:

- Bushfire Management Committee Meetings
- Local/District Emergency Management Committee Meetings
- Local Government Meetings
- Zone/Regional conferences and information days
- Other such meetings as authorised by the Dept.

Completion of Fire Reports where insufficient time available at the conclusion of calls

Testing of Fire Alarms

Attendance at station to enable service and maintenance work to be carried out

Station maintenance (ie. lawn mowing, cleaning, BA and equipment checks)

Performance of Engine Keeper duties

Transporting NSWFB equipment in private vehicle

Hose Repairs

Recharging of BA cylinders

Participation in selection committees

Attendance at PR activities (ie. open days, fetes, career markets, information displays, etc.)

Attendance at Public Education activities (ie. sessions in schools/community groups, smoke alarm campaigns)

Participation in joint training sessions/exercises with other emergency services

Attendance at training exercises/schools additional to the normal drill program

Hydrant Inspections

Pre-incident planning exercises