

# **CROWN EMPLOYEES (FIRE AND RESCUE NSW FIREFIGHTING STAFF DEATH AND DISABILITY) AWARD 2023**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Industrial Relations Secretary.

(Case No. 50173 & 45309 of 2023)

Before Commissioner McDonald

17 October 2023

## **AWARD**

### **1. Introduction, Intentions and Commitments**

- 1.1 This Award shall be known as the "Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2023".
- 1.2 The intentions and commitments of this Award are to: -
  - 1.2.1 Promote firefighters' health and fitness and to assist firefighters in meeting the occupational requirements of their job.
  - 1.2.2 Provide practical support, education and assistance to firefighters through structured health and fitness programs.
  - 1.2.3 Provide rehabilitation and retraining for permanent firefighters suffering partial and permanent incapacity.
  - 1.2.4 Provide benefits in the event of the death or the termination of employment of permanently incapacitated firefighters.

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### 3. Definitions

"actuary" means an actuary appointed by the Trustee of the Death and Disability Superannuation Fund.

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

"Deemed annual salary" means the "Per Week" rate of pay of a Qualified Firefighter as set out at Table 1 of Part C of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award multiplied by 52.1785.

"Deemed fortnightly salary" means the "Per Week" rate of pay of a Qualified Firefighter as set out at Table 1 of Part C of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award multiplied by 2.

"Death and Disability Superannuation Fund" means the superannuation fund established in accordance with this Award.

"Electricity Industry Superannuation Scheme" ("EISS") has the same meaning as it has in the *Superannuation Administration Act 1996*.

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

"FRNSW" means Fire and Rescue New South Wales, established by the *Fire Brigades Act 1989* and as a Public Service Executive Agency under Schedule 1 of the *Government Sector Employment Act 2013*.

"firefighter" means either a permanent firefighter or a retained firefighter as defined in this clause.

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

"Judges Pension Scheme" ("JPS") means the superannuation scheme established under the *Judges' Pensions Act 1953*.

"Local Government Superannuation Scheme" ("LGSS") has the same meaning as it has in the *Superannuation Administration Act 1996*.

"off duty injury" means any personal injury or disease which is not an on duty injury.

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

"ordinary duties" means the full range of work that was usually performed by the firefighter immediately prior to suffering the condition, illness or injury that caused them to cease to perform, in whole or in part, such work.

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

"partial and permanent incapacity" means that a firefighter is no longer fit to carry out the full range of his/her ordinary duties with FRNSW.

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

"permanent firefighter" has the same meaning as 'employee' under the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award.

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

"retained firefighter" has the same meaning as 'employee' under the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award.

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

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

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

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

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

#### **4. Health Screening**

- 4.1 The parties agree and accept the need for a non-compulsory and non-punitive health screening program that is underpinned by practical support, education and assistance provided by FRNSW.
- 4.2 The parties agree that the Health Screening Program will be in accordance with clause 58 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) 2023 Award for permanent firefighters and clause 52 of the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2023 for retained firefighters.
- 4.3 The Health Screening program referenced in subclause 4.2 will replace the current Health Checks system provided for under this Award and will operate for a trial basis for 36 months commencing on a date to be agreed between FRNSW and FBEU. The current clauses relating to Health Checks (as contained at clause 8 and Annexure A of the Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability Award 2022 and replicated at Schedule 1 of this Award) will have no application (with the exception of that provided for by clauses 8.1 (c), 14.1 and Fitness Drills at 8 a) and b) of Annexure A of Schedule 1) until the expiry of the 36 month trial period at which point they will either be removed from the Award by consent of the parties or become re-operative, following consultation between the parties in accordance with clause 9 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) 2023 Award and clause 8 of the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2023.

#### **5. Death and Disability Superannuation Fund**

- 5.1 FRNSW will maintain, with the agreement of the FBEU, a Death and Disability Superannuation Fund to pay the benefits prescribed by clauses 9, 10 and 11 of this Award. The Fund shall operate in accordance with relevant Commonwealth legislation and the terms of the trust deed by which it is created.
- 5.2 The terms of the trust deed by which the Death and Disability Superannuation Fund is created shall provide that the Trustee of the Death and Disability Superannuation Fund is required to reduce the benefits otherwise payable from the said fund so as to offset any benefits prescribed by this Award that have previously been paid from the Death and Disability Superannuation Fund or by FRNSW pursuant to this Award.

## **6. Contributions to the Death and Disability Superannuation Fund**

- 6.1 Subject to subclause 6.2, permanent firefighters who are less than 67 years of age and who are covered by FSS or who are contributors to SASS or who have elected under section 10 of the *First State Superannuation Act* 1992 to make other arrangements shall each fortnight contribute an amount equivalent to 0.8 per cent of the Deemed fortnightly salary to the Death and Disability Superannuation Fund.
- 6.2 Permanent firefighters who contribute to SASS and who contribute for additional benefit cover shall within three months of commencing employment make an election on a "once only" basis, whether they wish to contribute to the Death and Disability Superannuation Fund. Permanent firefighters who elect to not contribute to the Death and Disability Superannuation Fund shall not be eligible to receive a pension or lump sum payment prescribed by this Award.
- 6.3 The contributions prescribed by this Award in relation to permanent firefighters who are contributors to SASS are additional to the contributions that they are required to make under the *State Authorities Superannuation Act* 1987.
- 6.4 Notwithstanding the provisions of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award and the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award, a firefighter who is required or elects to make contributions pursuant to this clause will do so by sacrificing an amount of unearned salary equivalent to the firefighter's contribution pursuant to this clause, unless they elect to contribute from their post-tax salary. Such salary sacrifice shall not be taken into account for the purpose of calculating the remuneration that the firefighter would have received in the event that no salary sacrifice had been applicable.
- 6.5 Subject to subclause 6.6, FRNSW shall each fortnight contribute an amount equivalent to 0.5 per cent of the Deemed fortnightly salary to the Death and Disability Superannuation Fund in respect of each retained firefighter who is less than 67 years of age.
- 6.6 FRNSW shall each fortnight contribute an amount equivalent to 0.2 percent of the Deemed fortnightly salary to the Death and Disability Superannuation Fund in respect of each retained firefighter who is less than 67 years of age and who, by virtue of their primary employment, is already a member of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF, PBRI or who is a LGSS or EISS Division B "Retirement Scheme" member with additional benefit cover or who is a SASS member with additional benefit cover.
- 6.7 FRNSW shall contribute to the Death and Disability Superannuation Fund such sum as may be necessary to meet any shortfall between the Fund's reserves and that sum that it needs in order to pay the superannuation pensions and superannuation lump sum benefits prescribed by this Award (or past Awards).
- 6.8 A firefighter on any form of leave without pay shall continue to be covered by this Award and shall be required to make the contributions that he/she would otherwise have made had he/she not been on leave without pay.
- 6.9 FRNSW shall each fortnight deduct the contributions that firefighters are required or elect to make pursuant to this clause from their salaries and forward such contributions together with the contributions that FRNSW is required to make in respect of retained firefighters to the Death and Disability Superannuation Fund.

## **7. Other Benefits Applicable to Firefighters**

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

## 8. Medical Retirement

8.1 A firefighter who has either:

- (a) been directed to access their benefits under this Award by FRNSW in accordance with clause 58 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award and Clause 52 of the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award; and/or
- (b) has reason, supported by medical information, to believe that they may be unfit for duty, permanently or otherwise;

can access the benefits provided for under clause 10, 11 and 13 of this Award.

- (c) Where FRNSW disagrees with the medical information at subclause 8.1 (b) above, Clause 8 at Schedule 1 will apply.

## 9. "On Duty" Death Benefits

9.1 The benefits prescribed by this clause are payable from the Death and Disability Superannuation Fund.

9.2 In the event that an on duty injury results in the death of a firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.1 or 6.5, a fortnightly pension equivalent to 40% of the Deemed fortnightly salary shall be paid to the deceased firefighter's spouse until that spouse's death.

9.3 Children's pensions shall be payable in addition to the spouse pension payable under subclause 9.2 on the same basis as in SSS, provided that such fortnightly pensions shall be set at a rate equivalent to 5% of the Deemed fortnightly salary in respect of each eligible child.

9.4 Pensions shall be able to be commuted on the same basis as in SSS.

9.5 The provisions of the other subclauses of this clause shall not apply in the event that an on duty injury results in the death of a firefighter who does not have a spouse at the time of his or her death. In such cases, the firefighter's death shall, for the purposes of this Award, be treated as if it was the result of an off duty injury and a lump sum payment shall be paid from the Death and Disability Superannuation Fund in accordance with the following table.

Age	Benefit as a multiple of the Deemed Annual Salary
59 and under	4.8
60	4.2
61	3.6
62	3.0
63	2.4
64	1.8
65	1.2
66	0.6
67	0.0

9.6 A minimum guaranteed lump sum benefit is payable in the same circumstances as prescribed in section 31A of the *Superannuation Act* 1916, but the "minimum benefit" as defined in section 31A(7) will not apply and for the purposes of this Award the minimum benefit shall be the amount that would have been payable under subclause 9.5 had the firefighter not had a spouse at the time of the firefighter's death.

9.7 The fortnightly pensions payable under this clause shall continue to be adjusted throughout the life of each such pension in line with movements in the Deemed salary.

9.8 In the case of a retained firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.6 and who suffers death as the result of an on duty injury and who,

by virtue of his/her primary employment, was already a member of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who was a LGSS or EISS Division B "Retirement Scheme" member with additional benefit cover or who was a SASS member with additional benefit cover, the other benefits of this clause shall not be payable and a lump sum benefit equivalent to 20% of the Deemed annual salary shall instead be paid to the deceased retained firefighter's estate.

**10. "On Duty" Total and Permanent Incapacity Benefits**

- 10.1 The benefits prescribed by this clause are payable from the Death and Disability Superannuation Fund.
- 10.2 In the event that an on duty injury results in the total and permanent incapacity of a firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.1 or 6.5, a fortnightly pension equivalent to 60% of the Deemed fortnightly salary shall be paid to the firefighter until his or her 67th birthday or death (whichever the earlier).
- 10.3 Pensions shall be able to be commuted at age 60 or any time thereafter, with the commuted lump sum to be determined in accordance with the table at subclause 9.5.
- 10.4 Where a former firefighter in receipt of a total and permanent incapacity pension suffers death prior to his or her 67th birthday then a lump sum amount determined in accordance with clause 11 shall be paid to the deceased former firefighter's estate.
- 10.5 To avoid doubt, the lump sum payments under subclauses 10.3 and 10.4 shall be determined by the former firefighter's age at the time of commutation or death, as the case may be, and not their medical retirement
- 10.6 The fortnightly pensions payable under this clause shall continue to be adjusted throughout the life of each such pension in line with movements in the Deemed salary
- 10.7 In the case of a retained firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.6 and who suffers total and permanent incapacity as the result of an on duty injury and who, by virtue of his/her primary employment, is already a member of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who is a LGSS or EISS Division B "Retirement Scheme" member with additional benefit cover or who is a SASS member with additional benefit cover, the other benefits of this clause shall not be payable and the retained firefighter shall instead be paid a lump sum benefit equivalent to 20% of the Deemed annual salary.

**11. "Off Duty" Death and Total and Permanent Incapacity Benefits**

- 11.1 The benefits prescribed by this clause are payable from the Death and Disability Superannuation Fund.
- 11.2 Subject to subclause 11.4, in the event that an off duty injury results in the death or total and permanent incapacity of a firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.1 or 6.5, a lump sum payment in accordance with the scale set out in subclause 11.3 shall be paid to the firefighter or his/her estate.
- 11.3 For the purposes of this subclause, a firefighter's age shall be his/her age at the time of his/her death or at the date that he/she ceases to be employed by FRNSW or at such earlier date as may be determined by the Trustee of the Death and Disability Superannuation Fund.

Age	Benefit as a multiple of the Deemed Annual Salary
59 and under	4.8
60	4.2
61	3.6
62	3.0
63	2.4
64	1.8

65	1.2
66	0.6
67	0.0

- 11.4 The actuary shall separately review and assess the cost of the benefits provided by this Award for both permanent firefighters and retained firefighters by 30 June each year. In the event that the actuary's review finds that the long-term cost of the off duty benefits provided by this clause for either employee group exceeds both (a), the long-term contributions to be made by that employee group, and (b), 30% of the long-term combined cost of the benefits provided clauses 9, 10 and 11 for that employee group, then the scale at subclause 11.3 shall be reduced for that employee group on 1 January next to the extent necessary to ensure that the long-term cost of the off duty benefits for that employee group no longer exceeds either (a) or (b). Once the scale is reduced for an employee group it shall remain subject to annual adjustment, both upwards and downwards as each review permits, until such time as the scale at subclause 11.3 is returned to provided that where any adjustment would be less than 5% then no adjustment will be made.
- 11.5 Retained firefighters for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.6 and who suffer death or total incapacity as the result of an off duty injury and who, by virtue of their primary employment, are already members of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who are LGSS or EISS Division B "Retirement Scheme" members with additional benefit cover or who are SASS members with additional benefit cover shall not be entitled to the other benefits of this clause and a lump sum benefit equivalent to 20% of the Deemed annual salary shall instead be paid to such retained firefighters or their estate.

## **12. Rehabilitation and Retraining for Permanent Firefighters Who Suffer Partial and Permanent Incapacity**

- 12.1 Every permanent firefighter who suffers partial and permanent incapacity (PPI) shall receive extensive rehabilitation/retraining with the objective placing them in a suitable position within FRNSW. All reasonable efforts will be made by FRNSW to ensure that a permanent firefighter who suffers PPI is so placed, including by identifying potential employment opportunities as soon as practicable and directing the firefighter's rehabilitation/retraining to that end, and in consultation with the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed).
- 12.2 Where FRNSW believes that, notwithstanding every reasonable effort to the contrary, a suitable position may not be found for a permanent firefighter who, by reason of PPI, is undergoing rehabilitation/retraining, the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) shall be informed at the earliest possible opportunity.
- 12.3 The employment of a permanent firefighter who suffers PPI will not be terminated because of the lack of a suitable position within FRNSW without the firefighter's consent. In the event that the firefighter does not consent, an adequate opportunity will be given to the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) to consider FRNSW's opinion that no suitable position is available and to put that opinion into dispute in accordance with the dispute resolution clause in this Award.
- 12.4 The parties agree that it is anticipated that the rehabilitation/retraining and associated forward planning associated will minimise the likelihood that any permanent firefighter who suffers PPI will be terminated because at the end of their rehabilitation/retraining, a suitable position is not available.

## **13. Partial and Permanent Incapacity Benefits**

- 13.1 The partial and permanent incapacity benefits prescribed by this clause are provided and payable by FRNSW.
- 13.2 FRNSW may terminate the employment of a firefighter who suffers partial and permanent incapacity. Subject to subclause 13.3, a firefighter whose employment is terminated because the firefighter suffers partial and permanent incapacity shall be given the option of:

13.2.1 being paid a lump sum payment in accordance with this clause immediately upon termination; or

13.2.2 deferring a lump sum payment in accordance with this clause pending the determination of the firefighter's claim for a total and permanent incapacity benefit.

- 13.3 Subject to paragraph 13.2.2, a firefighter whose employment is terminated because the firefighter suffers partial and permanent incapacity shall be paid a lump sum payment in accordance with the scale set out below:

Age	Benefit as a multiple of the Deemed Annual Salary	
	for permanent firefighters	for retained firefighters
52 and under	3.08	0.308
53	2.81	0.281
54	2.53	0.253
55	2.25	0.225
56	1.95	0.195
57	1.65	0.165
58	1.34	0.134
59	1.02	0.102
60	0.69	0.069
61	0.35	0.035
62	0	0

#### **14. Assessment of Entitlement to Benefits**

- 14.1 Entitlement to the partial and permanent incapacity benefits provided by FRNSW pursuant to this Award shall be assessed through the mechanism provided for in the provisions contained at Schedule 1 of this Award titled "Clause 8. Assessment of Fitness for Duty and Permanent Incapacity".
- 14.2 Entitlement to receive a total and permanent incapacity or death benefit from the Death and Disability Superannuation Fund shall be assessed in accordance with relevant Commonwealth legislation and the terms of the trust deed by which the Fund operates.
- 14.3 To avoid doubt, a firefighter can receive either a total and permanent incapacity benefit, or a partial and permanent incapacity benefit, but not both. FRNSW shall advise the Death and Disability Fund the name of any firefighter who receives a partial and permanent incapacity lump sum payment, and of the amount so paid.
- 14.4 Subject to subclause 14.2, any dispute as to the entitlement to receive a benefit from the Death and Disability Superannuation Fund or any other dispute arising under or regarding the application of this Award may be referred to the Industrial Relations Commission of New South Wales for final determination.
- 14.5 To avoid doubt, the provision at subclauses 12.1, 12.2 and 12.3 whereby the FBEU is to be informed "unless the firefighter expressly declines to agree to the FBEU being informed" is intended to allow the firefighter to seek the FBEU's advice before authorising or agreeing to any course of action or signing any document associated with those subclauses and unless the firefighter does expressly decline to agree to the FBEU being informed then FRNSW will neither expect nor allow a firefighter to authorise or agree to any course of action nor sign any document associated with their rehabilitation/retraining or possible termination until such time as the FBEU has been notified in writing and been given adequate opportunity to confer with the firefighter.

#### **15. Grievance Mechanism**

- 15.1 If an issue gives rise to a dispute it shall be dealt with in accordance with the Dispute Procedure in clause 10 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award.



## **16. Anti-Discrimination**

- 16.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act* 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 16.2 It follows that in fulfilling their obligations under clause 15 of this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make an application to vary any provision of this Award, which by its terms or operation, has direct or indirect discriminatory effect.
- 16.3 Under the *Anti-Discrimination Act* 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 16.4 Nothing in this clause is taken to affect any conduct or act which is specifically exempted from anti-discrimination legislation; offering or providing junior rates of pay to persons under 21 years of age; any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act* 1977; and/or a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 16.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

## **17. Area, Incidence, Duration and Parties Bound**

- 17.1 This Award shall apply to all permanent firefighters and retained firefighters, as defined in clause 3, Definitions, who are employed by FRNSW.
- 17.2 This Award shall rescind and replace the Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2022.
- 17.3 This Award shall be binding upon the FBEU and FRNSW.
- 17.4 This Award shall take effect on and from 26 February 2023 and shall remain in force until 25 February 2024.

## **Schedule 1 – 2022 Award Health Checks Provisions**

### **Clause 8. Assessment of Fitness for Duty and Permanent Incapacity**

- 8.1. The procedures set out at subclauses 8.2 to 8.5 inclusive will apply if:
- 8.1.1 FRNSW has reason to believe that:
- 8.1.1.1 a firefighter may be unfit for duty, permanently or otherwise, and that firefighter disagrees; or
- 8.1.1.2 it may be necessary to impose certain medical/physical conditions or restrictions on a firefighter, permanently or otherwise, and that firefighter disagrees with the need for some or all such conditions or restrictions; or
- 8.1.2 A firefighter has reason, supported by medical information, to believe that:
- 8.1.2.1 the firefighter may be unfit for duty, permanently or otherwise, and FRNSW disagrees; or

- 8.1.2.2 it may be necessary to impose certain medical/physical conditions or restrictions on the firefighter, permanently or otherwise, and FRNSW disagrees with the need for some or all such conditions or restrictions; or
- 8.1.3 A firefighter has already been assessed as defined at paragraphs 8.6.2, 8.6.3 or 8.6.4 and subsequently obtains more contemporary information which suggests that they may be fit or that their requirements or restrictions should be changed, and FRNSW disagrees.
- 8.2 If the medical assessment is initiated by FRNSW at subclause 8.1.1 then FRNSW will advise the firefighter in writing of their need to undergo an immediate health assessment by a medical practitioner nominated by FRNSW, and its reason(s) for such referral.
- 8.3
- 8.3.1 If FRNSW believes at any point in time that a permanent firefighter's condition is such that by remaining on-duty he/she may endanger themselves, their colleagues or the public, FRNSW will, having regard to the firefighter's circumstances, either assign appropriate alternative duties for the firefighter or direct the firefighter on special leave (which is not to be deducted from any of the firefighter's leave balances) pending the determination of their condition in accordance with this clause. A permanent firefighter who is stood down from their ordinary duties in accordance with this subclause will continue to receive their ordinary pay until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this Clause, or the assessing medical practitioner reports pursuant to subclause 8.6. To avoid doubt, a permanent firefighter's ordinary pay shall be the pay to which the permanent firefighter would have been entitled had they been on sick leave.
- 8.3.2 Subject to paragraph 8.3.3, if FRNSW believes at any point in time that a retained firefighter's condition is such that by continuing to attend emergency incidents he/she may endanger themselves, their colleagues or the public, FRNSW will allow the firefighter to respond to their station, but not the incident, for all calls received by their brigade, and to attend all drills pending the determination of their condition in accordance with this clause. A retained firefighter who is placed on non-response duties in accordance with this subclause will continue to be permitted to - 6 - attend the station for calls and drills until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this clause, or the assessing medical practitioner reports pursuant to subclause 8.6.
- 8.3.3 If FRNSW believes at any point in time that a retained firefighter's condition is such that by continuing to attend the station he/she may endanger themselves, their colleagues or the public, FRNSW will direct the firefighter to not attend their station pending the determination of their condition in accordance with this clause. A retained firefighter who is excluded from their station in accordance with this subclause will be paid a fortnightly amount equivalent to the retained firefighter's highest fortnightly pay within the three month period immediately prior to their exclusion, and such payment shall continue until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this clause, or the assessing medical practitioner reports pursuant to subclause 8.6.
- 8.4 Whether the medical assessment is initiated by FRNSW at paragraph 8.1.1 or a firefighter at paragraph 8.1.2, FRNSW will arrange for a reasonable appointment for the firefighter as soon as possible, if not with FRNSW's preferred medical practitioner then with some other suitable medical practitioner, and will notify both the firefighter and the assessing medical practitioner in writing setting out:
- 8.4.1 the time, date and location of the appointment;
- 8.4.2 the inherent requirements of the firefighter's ordinary duties and the firefighter's typical work environment(s);
- 8.4.3 the health-related issue(s), if any, which FRNSW believes may be affecting work performance;

- 8.4.4 the manner in which it is believed work performance has been/is being and/or may be affected, including evidence where available;
  - 8.4.5 any specific question(s) from FRNSW. It will not be sufficient to simply request an assessment of a firefighter's "fitness to continue" or assume such question(s) would be inferred by the assessing medical practitioner from the general background information provided; and
  - 8.4.6 a summary of all relevant documents in checklist format.
- 8.5 The assessing medical practitioner should take into account any and all relevant material supplied by FRNSW, the firefighter and/or the firefighter's own medical practitioner(s). FRNSW will ensure that any material provided to the assessing medical practitioner will at the same time also be provided to the firefighter and/or the medical practitioner(s) nominated by the firefighter.
- 8.6 The assessing medical practitioner's report, which will be in writing and provided to both FRNSW and the firefighter, should conclude that the firefighter is, in that medical practitioner's opinion, either:
- 8.6.1 fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
  - 8.6.2 fit to perform the firefighter's ordinary duties with specified requirements or restrictions; or
  - 8.6.3 temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
  - 8.6.4 temporarily unfit to perform any FRNSW duties; or
  - 8.6.5 permanently unfit to perform the firefighter's ordinary duties.
- 8.7 FRNSW will write to the firefighter within 7 days of receipt of the assessing medical practitioner's report stating that it has either:
- 8.7.1 wholly accepted the assessing medical practitioner's report; or
  - 8.7.2 partially accepted the assessing medical practitioner's report, together with the reason(s) for its non-acceptance of the relevant part(s); or
  - 8.7.3 accepted none of the assessing medical practitioner's report and its reasons for same.
- 8.8 If the FRNSW determination at subclause 8.7 is that the firefighter is permanently unfit to perform the firefighter's ordinary duties then the firefighter shall be deemed for the purposes of this Award to have suffered partial and permanent incapacity until determined otherwise in accordance with this clause. FRNSW shall inform the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) at the earliest possible opportunity.
- 8.9 A firefighter may request by way of report that the Commissioner review the FRNSW determination at subclause 8.7 within 14 days of receipt of that written determination or within 7 days of the Department having informed the FBEU, whichever is the later. A firefighter who makes such a request shall then be allowed 28 days, or such additional time as the Commissioner may allow, in order for a medical practitioner of the firefighter's choosing to:
- 8.9.1 review all previous reports and documentation relating to the matter; and
  - 8.9.2 confer with a FRNSW-nominated medical practitioner with a view to maximising the areas of agreement and minimising any areas of disagreement between them. In order to facilitate such conferences, FRNSW and the firefighter must, by no later than close of business on the next working day following the firefighter's request for a review, exchange the contact details of their respective nominated medical practitioners and in the case of the firefighter, written authorisation for their nominated medical practitioner to discuss their medical information with the FRNSW nominated medical practitioner; and

- 8.9.3 produce a report (and, if the FRNSW-nominated medical practitioner is agreeable, a joint report) of their conclusions.
- 8.9.4 The Commissioner will consider all previous reports and documentation relating to the matter, together with any additional information (including the medical practitioner's report at paragraph 8.9.3) submitted by the firefighter and will within 14 days supply the firefighter concerned with a written and final FRNSW determination of the matter.
- 8.10 If the firefighter does not agree with the Commissioner's determination at subclause 8.9 then the matter may be referred to the Industrial Relations Commission (the Commission) for final determination of the matter, i.e. whether the firefighter is;
- 8.10.1 fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
- 8.10.2 fit to perform the firefighter's ordinary duties with specified requirements or restrictions; or
- 8.10.3 temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
- 8.10.4 temporarily unfit to perform any FRNSW duties; or
- 8.10.5 permanently unfit to perform the firefighter's ordinary duties.
- 8.11 Where a dispute cannot be settled by conciliation, the parties agree in principle that the preferred method of adjudication will be by the Commission utilising the 'Bluescope model'. The 'Bluescope model' will be adopted except where the Commission orders otherwise or where one of the parties elects not to use the Bluescope model and notifies the other party of this election as soon as practicable before or at the time the dispute is notified to the Commission.
- 8.12 A firefighter who is found to be temporarily unfit as per paragraphs 8.6.3 or 8.6.4 or 8.10.3 or 8.10.4 will be given the appropriate period of time, as advised by the assessing medical practitioner, necessary for the firefighter to return to their ordinary duties.
- 8.13 A firefighter who fails to return to their ordinary duties within the appropriate period of time, or within six months from the date they last performed their ordinary duties or previous assessment (whichever occurs first) will be referred for medical re-assessment.
- 8.14 FRNSW will bear the cost of any assessment conducted by a medical practitioner pursuant to subclauses 8.4, 8.5 and 8.6, and of any independent assessment conducted at subclause 8.13, provided that in the case of any review conducted at subclauses 8.8 and 8.9 (only), the firefighter and FRNSW will each be responsible for the costs of their own nominated medical practitioner.
- 8.15 A firefighter who fails to comply with a reasonable direction to attend and participate in a medical assessment under this mechanism may be subject to disciplinary action.
- 8.16 A firefighter who has been determined as suffering partial and permanent incapacity may at any time elect to be assessed by the Death and Disability Superannuation Fund for total and permanent incapacity, in which case FRNSW will make all reasonable efforts to assist the Fund in concluding such assessment as soon as practicable.
- 8.17 The employment of a firefighter who is determined as suffering partial and permanent incapacity will be terminated in accordance with clause 13, or otherwise upon such firefighter's consent or request.

## **ANNEXURE A**

### **Principles and Procedures of the Firefighters' Health and Fitness Program**

## **1. Objectives**

- To promote the health and fitness of firefighters and to assist them in meeting the occupational requirements of their job.
- To provide practical support, education and assistance to firefighters through a structured health and fitness program.

## **2. Benefits for the firefighter**

- A compulsory health assessment as recommended for the firefighter on medical advice.
- A comprehensive individual report.
- Access to individual health and fitness counselling sessions.
- Access to health and fitness resource materials.
- Identification of negative lifestyle habits and risks.
- Identification of some medical conditions.
- Early intervention and management of medical conditions.
- Health statistics over the lifetime of career as a firefighter.
- Decreased risk of death, injury or disability from disease.
- Increased ability to cope with the physical and emotional stresses of firefighter duties.
- Heightened job performance and satisfaction.

## **3. General benefits for the employer**

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

- the number and cost of worker's compensation and death and disability claims.
- payroll costs due to sick or injured workers.
- identification of negative health factors (work-related or other) for FRNSW.

## **4. Outcomes**

- A healthy and fit workforce.
- Increased capacity to cope with the physical and psychological demands of firefighting.
- Decreased risk of injury, illness and disease, leading to a reduction in the number and cost of health related absences, workers compensation claims/premiums and Death and Disability claims.
- Compliance with relevant Work Health and Safety legislation and Australian Standards.
- Identification and analysis of trends for the purpose of developing firefighter specific health and safety interventions.

## **5. Focus Areas**

- Support Program - Introduction of a comprehensive program designed to support firefighters in their efforts to improve personal health outcomes.
- Health and fitness checks - Introduction of a firefighter-specific health assessment program designed to identify significant health issues.

## **6. Principles**

- Broad consultation with all stakeholders in the development and delivery of programs is critical to success.
- Collaboration with international, national and state initiatives is essential for a sustained and systematic approach to health promotion and injury/disease prevention.
- Linking relevant programs and taking a comprehensive/holistic approach to health promotion and injury/disease prevention will provide maximum impact.

- Long term ‘capacity building’ will prolong and multiply health gains for both firefighters and FRNSW.

## 7. Key Strategies

### Infrastructure

Develop the physical and organisational infrastructure needed to implement program components. This includes support structure (e.g. health/fitness and return to work professionals), related systems and procedures (e.g. data management, pathways for rehabilitation), resources (e.g. educational materials).

### Education

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

### Environments

Create work environments that promote and encourage healthy lifestyle behaviours (a ‘healthy’ organisational culture). Focus on provision of healthy lifestyle education.

### Monitoring/Evaluation

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

## 8. Health Checks and Fitness Drills

### Fitness Drills

- (a) The health and fitness program will include a compulsory fitness drill, commencing in January 2018, for all firefighters who may be called upon to perform operational firefighting duties in order to enhance their personal understanding of their functional capacity. The compulsory fitness drill will be subject to negotiation and agreement or, in the absence of agreement, determination by the Industrial Relations Commission (and the status quo will apply in the interim), but will be undertaken annually, locally and when on duty by not less than two firefighters utilising readily available operational equipment.
- (b) The annual fitness drill for retained firefighters will be considered and paid for as if it is a regular drill provided that attendance at the fitness drill will not count towards the 75% regular drill attendance requirement of subclause 23.1.2 of the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2023 and will be additional to the two regular drills per station, per month provision of subclause 13.10.2 of the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2023.

### Health Checks

- (c) The health and fitness program will also include regular health checks for firefighters by the firefighter’s nominated medical practitioner in accordance with a health check pack, which will be subject to negotiation and in the event that the parties do not agree, determination by the Industrial Relations Commission, which must occur prior to 31 March 2018. Following implementation, the health check pack will remain subject to negotiation and agreement and it will be open to either party to refer any matter that is not agreed to the Industrial Relations Commission for determination and the status quo will apply in the interim. The health check pack will include the inherent requirements of the firefighter’s ordinary duties and the firefighter’s

typical work environment(s), a template medical report and the tests to be conducted as part of the health check.

- (d) The implementation of the health and fitness checks will help to ensure:
- that firefighters are medically and physically capable of performing their required duties;
  - that the risk of injury or illness is reduced through constant monitoring of health trends and the implementation of focussed health interventions;
  - that FRNSW satisfies its statutory obligations under all relevant legislation;
  - the provision of current and accurate health/medical information for the purposes of resource allocation and planning.
- (e) The health checks will include:
- Medical examination (primary focus on cardiovascular, respiratory and musculoskeletal systems);
  - Pathology testing (general health markers; e.g. lipid profile, blood glucose level);
  - Urinalysis;
  - Twelve lead ECG;
  - Cardiac Risk Profile (risk score based on Framingham study);
  - Spirometry (lung function), if recommended by the firefighter's nominated medical practitioner;
  - Vision;
  - Audiometry (hearing), if recommended by the firefighter's nominated medical practitioner;
  - Other medical assessments as indicated.
- (f) The health checks (which will commence not prior to 31 January 2019 and in respect of any commencement date, upon four weeks formal advance notice to the FBEU) will be arranged and undertaken by each firefighter within the twelve month period following their fourth anniversary of employment, and again within the twelve month period following their ninth anniversary of employment, and so on, so that health checks are undertaken at least once every five years up until the age of 60, at which age health checks will then be arranged and undertaken by each firefighter no more than three years after their last health check until the age of 67, at which age health checks will then be arranged and undertaken by each firefighter annually.
- (g) The pathology tests, urinalysis and 12 lead ECG testing will all be undertaken on referral by the independent occupational physician prior to the health check, which will then be conducted by a local medical practitioner nominated by the firefighter having regard to the most reasonable option in terms of practicality and cost. A nominated medical practitioner who recommends spirometry and/or audiometry testing but, is unable to conduct such test(s), may refer the firefighter. FRNSW will ensure that the health checks (including spirometry and audiometry referrals) and any consequent referrals required by FRNSW will be arranged and conducted without any cost to the firefighter.
- (h) Firefighters who attend a health check while off duty will be compensated for their attendance and travel expenses by way of a payment equivalent to 4% of the Award's deemed fortnightly salary for each such attendance, and unless transport is provided by FRNSW, payment at the Official Business rate for the actual return distance necessarily and reasonably travelled between the firefighter's normal residence or place of work and the location(s) of each health check.
- (i) The firefighter's nominated medical practitioner will forward their report on the firefighter's health check, together with the results, to both the firefighter and the independent occupational physician nominated by FRNSW. The independent occupational physician will in turn review the firefighter's health check results against the firefighters' health and fitness standard and the nominated medical practitioner's report and advise FRNSW that the firefighter is:
- fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
  - fit to perform the firefighter's ordinary duties with specified requirements or restrictions;
- or

- temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
  - temporarily unfit to perform any FRNSW duties; or
  - permanently unfit to perform the firefighter's ordinary duties.
- (j) The independent occupational physician will provide no other information or advice to FRNSW concerning the firefighter's health and fitness without the firefighter's consent apart from such information regarding the specified requirements or restrictions as, in the professional opinion of the independent occupational physician, is necessary for the safe management of the firefighter. If the firefighter disagrees with the independent occupational physician's advice to FRNSW, then it will be open to the firefighter to seek a determination of their fitness for duty under clause 8.
- (k) Where a medical issue is identified during a health check, the health risk will be assessed against the inherent requirements of the firefighter's job (safety critical).
- (l) The results of the health checks will be collected and collated by an agreed independent third party and provided to both parties to allow them to assess and respond to firefighters' health risks.
- (m) FRNSW will not cover the cost of treatment for non-compensable injuries or illness. The treatment cost associated with compensable injuries or illness will be addressed through the Workers' Compensation system.

J. McDONALD, *Commissioner*

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