



2024 AWARD ARBITRATION – Q&A DOCUMENT

What has been the legal process to date?

The process for making Awards is governed by the Industrial Relations Act 1996 (NSW) which outlines a legal process for new Awards to be made that involves both conciliation and, following this arbitration where necessary.

When current Awards expire, and Award negotiations commence, typically both parties will file an application with the IRC to make a new Award which includes what each party will be seeking from that Award.

This application is made to commence a formal legal process for the making of a new Award and, for our purposes, also to preserve and lock the date for back payment of any increases gained in the new Award to the date of expiry of the old Award.

You might recall we did this on expiry of our current 2023 Awards.

Since that date we have been in a formal conciliation process (the first step in making a new Award) before IRC Commissioner McDonald which has involved a series of sessions before her and direct negotiations with FRNSW and State Government representatives to try and reach agreement.

The IRC however has the power during this process to declare that conciliation has failed, and to move our application for new Awards into an arbitrated process. This is what has now occurred with our Awards (more on this below).

What does arbitration mean?

Arbitration means that instead of the FBEU and FRNSW (with IRC assistance as a conciliator) negotiating and attempting to reach agreement on what should and shouldn't be included in the new Awards, this will instead be decided by a full bench of the IRC.

A full bench involves 3 Commissioners/Justices who will sit and hear our case. In effect, it is the "independent umpire" of the industrial relations system making the call on our new Awards.

The actual process itself will involve both us, and FRNSW formally providing evidence (witness statements, affidavits and statutory declarations along with other material) in support of our positions (in our case our log of claims). In particular, this evidence will focus on why we are justified in seeking whatever changes we are looking to make to the Awards or any new wages increases and conditions.

After a both parties have filed their evidence, there will be a formal hearing before the full bench of the IRC where witnesses may be required to attend to give their evidence and be asked questions by both legal teams and the full bench. The lawyers on both sides will also make formal arguments.

After the hearing, the full bench will then likely consider the matter for a period before making a formal decision (note, the time frame on any decision will be entirely up to the IRC, a process we have no control over).

Why are we arbitrating the awards?

To clarify, neither we, nor FRNSW, ultimately made the decision to arbitrate the Awards. The decision to move our Award applications from a conciliation to an arbitration process was made by the IRC after months of conciliation and negotiation.

Given the status of negotiations, where in effect we had reached a stalemate, there was not really much choice other than to arbitrate to bring negotiations to a head.

Further, arbitrating Awards in 2024 is a very different prospect to the previous process we had in place prior to this Government.

Under the Liberal/National Government the IRC had been severely hamstrung in its powers in relation to Award making by legally requiring the IRC to implement Government Wages policy. This included the overall cap on wages, along with a requirement that any new conditions or increases above that cap be paid for directly out of savings from the Award (i.e. paying for new conditions by giving up current ones).

Under the new system we have in place we now have the new Industrial Court which has increased powers to make actual binding decisions. Further, it is not restricted by a legislated wages policy meaning they can hear all the evidence from both sides and make an independent decision based on that evidence.

These changes by the Labor Government were a key election promise and mean we can now run work value and productivity and efficiency arguments before the IRC to justify our claims, which is hugely beneficial compared to the old system.

What's the process from here?

With conciliation now over, the next step is for what we call "directions" to be set by the IRC for our arbitration.

Directions is the process the puts together the timetable for each party to get their evidence together and filed with the IRC and eventually to set a hearing date.

This case will be a complex and lengthy case given how many claims we have and the nature of our claims. It will need a lot of evidence from relevant experts, FBEU staff and SCOM reps, and most importantly you as members. This means that the evidence process itself will likely take some months and the hearing may go multiple days or even weeks.

Therefore, don't expect a quick resolution to this process, it will take time but also, it should take time to make sure we put the best case forward that we can.

How do members participate?

It may seem that members can't participate or don't really have a role to play in a legal process like this but that is absolutely not the case.

First and foremost, we will need many of you to help us make sure we have all the information that we need to put the case together. We will need those of you out there who know about rescue to pull together all the info on the new rescue allowances for example, and those in training and education to help explain how our qualifications and skill set have moved forward and developed for the purposes of work value.

You all know our job best and why we are seeking the changes we're hoping to make to these Awards.

We will also need key personnel to provide witness statements and evidence in support of our claims. While we fully intend to use expert witnesses (such as economists etc) along with SCOM and staff, the best witnesses for the IRC to hear from are you, the members, who do the job day in day out. It's your pay and conditions at the end of the day.

Also, during the hearing itself, there may be an opportunity (depending on the location) for members to attend the IRC and listen in to the proceedings. A show of support and solidarity from the membership to not just those giving evidence, but also the full bench itself, will go a long way to ensuring they, as the decision makers, know these changes are driven by firefighters, and are for the benefit of the professional firefighting industry in NSW.

Lastly, our Code Reds and industrial campaign will continue. As stated above, this process will likely take many months, and a day is a long time in politics. It is therefore vital that we keep the pressure on FRNSW and Macquarie Street to Respect, Protect and Value our work.

Hopefully, this answers the questions that have been coming in. Any further queries can be made directly to Senior Industrial Officer Rini Krouskos through the office on 9218 3444 or via email at office@fbeu.net