

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

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Fire and Rescue NSW.

(XXXXXX)

Before Chief Commissioner Constant

XXXXXX 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 80 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) 2023 Award for permanent firefighters and clause 72 of the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2023 for retained firefighters.

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. Voluntary Medical Retirement

- 8.1 A firefighter who has medical evidence that they are suffering from an injury and/or illness rendering them permanently unable to perform their role or a suitable alternative role with FRNSW may at any time apply for medical retirement
- 8.2 FRNSW shall provide all permanent firefighters deemed as suffering partial permanent incapacity with extensive rehabilitation and retraining with the objective of placing them in a suitable position within FRNSW, according to Clause 12.
- 8.3 A firefighter who has medical evidence that they are suffering an injury and/or illness rendering them permanently unable to perform the inherent requirements of either their role, a suitable alternative role with FRNSW and/or a role outside of FRNSW for which they are, at the time of medical retirement, reasonably qualified to perform by way of education, training or experience, 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.

8.4 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.

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 **Subject to clause 8 and clause 12**, 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 at clause 8.
- 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 Avoidance Procedures in clause 35 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 24 February 2026.